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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Second periodic reports submitted by States parties under articles 16 and 17 of the Covenant

Addendum

NEW ZEALAND*

[30 September 2001]

* For the examination of the initial report submitted by the Government of New Zealand, at the ninth session of the Committee on Economic, Social and Cultural Rights in 1993, see document E/C.12/1993/SR.24-26; for the concluding observations, see document E/C.12/1993/13.

The information submitted by New Zealand in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.33/Rev.1).

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Introduction

1. New Zealand ratified the International Covenant on Economic, Social and Cultural Rights (the Covenant) on 28 December 1978. It entered into force for New Zealand on 28 March 1979.

2. This is New Zealand's second periodic report to the United Nations Committee on Economic, Social and Cultural Rights (the Committee). It is submitted in accordance with the requirements of articles 16 and 17 and covers mainly the period July 1990 to December 1997. Because of its late submission, it also seeks to cover various subsequent changes in trends, policy and legislation to mid-1999. In addition, due to the significance of reforms in relation to employment legislation, the report notes the impact of the introduction of the Employment Relations Act 2000. A report from the Administrator of Tokelau is included. New Zealand's ratification of the Covenant also extended to the Cook Islands and Niue. However, as self-governing States in free association with New Zealand, the Cooks and Niue not only have the capability to enter into and implement their international obligations, but this is also recognized as their responsibility. We remain involved in discussions with the United Nations Secretariat to determine how best to realize the wishes of the Cooks and Niue to be represented before the human rights treaty bodies on their own behalf, and stand ready to assist both countries to meet their human rights reporting obligations.

3. In preparing this report, the Government has endeavoured to present information suggested in the Committee's revised general guidelines regarding the form and contents of such reports (document HRI/GEN/2 of 14 April 2000). Attention has also been given to issues raised by the Committee during its consideration of New Zealand's initial report under the Covenant (E/1990-5/Add.5 of 1 February 1991), and in its concluding observations (E/C.12/1993/13 of 4 January 1994).

4. The report focuses on key developments in terms of legislation, policies and outcomes. Where the situation remains as outlined in New Zealand's initial report, the information has not been duplicated in this report.

5. This report supplements and should be read in conjunction with:

The core document on New Zealand (HRI/CORE/1/Add.33) following the criteria contained in document HRI/1991/1;

New Zealand's third periodic report under the International Covenant on Civil and Political Rights (CCPR/C/64/Add.10), and the fourth periodic report recently submitted;

New Zealand's tenth and eleventh (consolidated) reports under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/239/Add.3);

New Zealand's third and fourth (consolidated) reports under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/NZL/3-4 and Add.1);

New Zealand's initial report under the Convention on the Rights of the Child (CRC/C/28/Add.3); and the second period report recently submitted; and

New Zealand's second report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/29/Add.4).

Further relevant New Zealand reports to international bodies (for example to the International Labour Organization (ILO) regarding the implementation of ILO conventions) will be referred to under particular articles below.

6. In this report, "annex" refers to the annexes attached to the present report;* "supplementary materials" refers to the additional documents, one set of which is supplied for the information of the Committee.*

I. GENERAL

A. Overview

7. The period under review has seen a number of significant developments in the way in which New Zealand gives effect to the rights recognized in the International Covenant on Economic, Social and Cultural Rights and seeks to develop their enjoyment by its people. Among these developments are:

(a) The passage of the Employment Contracts Act 1991 which introduced a new framework for industrial relations in the interest of giving employees and employers more choice than previously in terms who represents them, what type of employment contract should apply, and what the contract should contain (para. 70). The Act also reformed the industrial relations structures within which the unions operated during the reporting period (paras. 146-168);

(b) The Employment Relations Act 2000, which repealed and replaced the Employment Contracts Act 1991, promotes mutual trust and confidence in the employment environment and good faith behaviour. The Act promotes collective bargaining while protecting individual employee choice. The anti-discrimination provisions of the Act reflect those of the Human Rights Act (discussed below). The objectives and main features of the Employment Relations Act are detailed below (para. 71 ff);

(c) The passage of the Human Rights Act 1993 which amalgamated the Race Relations Act 1971 and the Human Rights Commission Act 1977. It is also worth remarking that age and family status, disability, employment status, political opinion and sexual orientation have now been included as new prohibited grounds of discrimination by the Human Rights Act 1993. Discrimination has been made specifically unlawful in such areas as education, access and training, the provision of accommodation, the provision of goods, facilities and services, superannuation, and in employment (paras. 23 ff; 76-85);

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* Available for consultation in the files of the secretariat.

(d) A major review and improvement of provisions against domestic violence have been effected by means of the Domestic Violence Act 1995 and related measures (paras. 248-258);

(e) Reform of censorship and defamation legislation which saw the passing of the Films, Videos and Publications Classification Act 1993 and the Defamation Act 1992. The former Act brings together and rationalizes the laws and regimes relating to censorship of printed and other material, the public exhibition of films, and the labelling and classification of video recordings (paras. 600-602). The Defamation Act 1992 clarifies the law of defamation by, for example, replacing the defence of fair comment by the defence of honest opinion (paras. 603-604).

8. In the realm of public policy, the report is of interest in:

(a) Recording the effects of the first elections conducted under the new (Mixed Member Proportional) electoral system (para. 8) and providing more detail on the working of the new Citizens Initiated Referenda Act 1993 (para. 9);

(b) The development of an employment policy focused on the duration of unemployment combined with an economic policy aimed at reducing the numbers of unemployed (see under article 6);

(c) The reform of the social welfare system in order to target assistance more tightly to vulnerable groups, and to contain costs (see under article 9 and article 11);

(d) Restructuring of the public health system to encourage more efficient service delivery (see under article 12);

(e) Introduction of targeted programmes to address priority areas such as Maori, child and mental health (see under article 12);

(f) Revision of the education curriculum at the primary and secondary levels; increasing attention to the needs of specific groups; and the changes in funding arrangements for tertiary student subsidies (see under article 13);

(g) Reform of government-funded research, science and technology (see under article 15).

9. It will be apparent from this report and its annexes that, in areas such as employment (see under articles 6-8), education (see under article 13) and public health care (see under article 12), serious problems persist and have required increased attention from the Government and society in general. As in the past, human rights issues over quite a wide spectrum have been the subject of lively debate both in Parliament and in the community (for example, the Council of Trade Unions), and of active consideration by relevant independent agencies such as the Human Rights Commission, as well as by the courts.

B. Significant general developments

10. The following paragraphs outline significant developments during the review period which affected the broad context within which economic, social and cultural rights are safeguarded in New Zealand.

1. Political structure

(a) A new electoral system

11. A new, mixed member proportional, system for electing members of Parliament was established by the Electoral Act 1993. Details of the process of electoral change and the new election mechanisms were provided in New Zealand's third periodic report under the International Covenant on Civil and Political Rights (paras. 128-131). The first general election under the new system took place in 1996. The new Parliament was more br adly representative of New Zealand society than previous Parliaments. The representation of women increased from 21 per cent in 1993 to 30 per cent. The number of MPs of Maori and Pacific Island descent also increased. Before the 1996 election, Maori held 6 seats out of a total of 99, and after the election held 15 out of a total of 120. Three MPs were of Pacific Island descent and, for the first time, an MP of Chinese descent was voted into Parliament. After the 1999 election Parliament diversified even more. New Zealand has the first transsexual MP in the world and an openly homosexual MP. There are now four MPs of Pacific Island descent whereas the numbers in regard to the representation of women and Maori MPs kept stable. The MP of Chinese descent was re-elected. There was a period of negotiation after the 1996 election between parties represented in Parliament as to which would form a Government. A coalition of the New Zealand National Party and the New Zealand First Party was sworn into office as the Government in early December 1996. The 1999 election did not produce a clear majority and another coalition government between the Labour Party and the Alliance was sworn in. This government is a minority one.

(b) Citizens-initiated referenda

12. Private persons or organizations now have a statutory right to move the holding of referenda on any subject. Under the Citizens Initiated Referenda Act 1993, referenda may be held if the support of at least 10 per cent of registered electors is obtained by the person or organization promoting the proposal. The result of a referendum is indicative only and is not binding on the Government. A number of largely procedural amendments were made to the Act in 1995, the most significant of which was the introduction of a mechanism to withdraw a petition for a referendum.

13. Further information concerning paragraphs 10-12 above, including the Maori Electoral Option, is given in New Zealand's fourth periodic report under the International Covenant on Civil and Political Rights, in the context of article 25 of that Covenant (paras. 191-212).

2. Economic, social and cultural characteristics

(a) Economic performance

14. The New Zealand economy grew rapidly during the mid-1990s, with growth averaging 3.9 per cent between 1993 and 1997. Year on year growth peaked at over 6 per cent in mid-1994.

15. Over the first half of 1998, however, the economy went into recession. The "shocks" of the Asian economic downturn and an El Nino-induced drought that struck most of the east coast of the North and the South Islands hit the economy as it was slowing in response to tighter monetary policy. The Ministry of Agriculture and Forestry estimated at the time that the drought would reduce farm gate returns on affected farms by an estimated $260 million a year ending 30 June 1998, with a further loss of $170 million over the next few years. However, compared to past experience the slowdown in activity was moderate and short-lived. A broad-based recovery began in the second half of 1998 although drought related effects again impacted on growth temporarily in mid-1999 (this La Nina-induced drought impacted mainly on the central North and South Island).

16. Employment growth was very strong in the 1994 to mid-1996 period with annual growth running at between 4 per cent and 5 per cent leading to the unemployment rate falling from nearly 11 per cent in 1991 to around 6 per cent in 1996. Since then employment growth has fluctuated in line with the moderation in output growth and the recession in 1998. Despite this the unemployment rate has remained in the 6 per cent - 8 per cent range during the reporting period. The most recent peak in the unemployment rate was 7.7 per cent in December 1998.

17. New Zealand has experienced a substantial improvement in inflation performance during the 1990s relative to previous decades. Annual inflation as measured by the Consumers Price Index (CPI) remained below 2 per cent from the December 1991 quarter through to the September 1994 quarter before rising to around 4 per cent in mid-1995 as the economy experienced rapid growth and monetary policy was tightened.

18. Over the latter half of the 1990s, New Zealand has been running current account deficits of between 5 per cent and 7 per cent of gross domestic product (GDP). During the 1990s, New Zealand's current account deficit has predominantly been a story of payments to non-residents who have built up substantial direct investment in New Zealand. While the trade balance has generally been in surplus, the deficit on the investment income balance has been equivalent to around 7 per cent of GDP.

19. In 1998 and 1999, the current account deficit was affected by both changes in the investment income deficit and the goods and services balance. Fluctuations in the investment income balance have occurred due to profits accruing to foreign investors in New Zealand moving with the economic cycle in New Zealand and also variable profits earned by New Zealand investments offshore.

20. The goods and services balance deteriorated partly as a result of drought, the Asian crisis, oil price changes and some large one-off imports.

21. In 1999 the account deficit was considered to be at its peak with commentators generally forecasting a fall in the deficit over the next few years, driven by an improvement in the trade balance.

22. The Government's financial position has strengthened considerably during the 1990s, with net debt having been reduced to around 20 per cent in 1999.

(b) Demography

23. In the period under review, the ethnic composition of the New Zealand population has undergone a (still continuing) change, as shown in the following extract from the Annual Report of the Office of the Race Relations Conciliator for the year ended 30 June 1997, page 7:

> "New Zealand now has a more diverse ethnic make-up than it did in 1986. The number and percentage who identified themselves as European has dropped in the period between 1986 and 1996. Europeans now make up 71.7 per cent of the population whereas in 1986 this figure was 81.2 per cent. Maori, Pacific Island and Asian ethnic groups have increased as a percentage of the total population. It is predicted that the European population will decrease markedly as a percentage of the total population in the next 25 years if the present trend continues."

(c) Treaty of Waitangi

24. Further significant progress has been made in settling Maori claims under the Treaty of Waitangi referred to in the Introduction to the initial report under the Covenant. Details of recent settlements and continuing proceedings before the Waitangi Tribunal are contained in New Zealand's tenth and eleventh (consolidated) report to the Committee on the Elimination of Racial Discrimination (paras. 20-29; 42 ff), and the fourth periodic report under the International Covenant on Civil and Political Rights, in the context of article 27 (paras. 217-224) of the latter.

3. General legal framework within which human rights are protected

25. New Zealand has taken steps to develop and strengthen mechanisms and institutions in the human rights area.

(a) Human Rights Act 1993

26. The Human Rights Act 1993 is designed to rationalize institutions and procedures for monitoring and enforcing anti-discrimination law, and for extending the grounds on which discrimination is prohibited. The new Act is linked to the promotion of social, economic and cultural rights through its long title: "to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights."

27. A more detailed description of the Act is contained in New Zealand's third periodic report under the International Covenant on Civil and Political Rights (paras. 13-24), and the full text of the Act is available in annex B to that report. Some of the key points to note here are:

(i) Strengthening of the Human Rights Commission

28. The Act restructured the Human Rights Commission in order to make it more effective and expanded the jurisdiction of the Commission over the general promotion and protection of a number of the rights recognized in the Covenant. This development is relevant to the recommendation made by the Committee in paragraph 16 of its concluding observations on New Zealand's initial report that the work of the Human Rights Commission be reinforced in relation to economic, social and cultural rights. Section 5 of the Act gives the Commission power to, inter alia:

(a) Inquire into any matter where human rights may be infringed (carried over from 1977 Human Rights Commission Act);

(b) Issue guidelines;

(c) Report to the Prime Minister on compliance with international human rights instruments (carried over from 1977 Human Rights Commission Act);

(d) Examine all New Zealand legislation by the end of 1998 in order to determine whether there is any conflict with the provisions of the Act or infringement of its spirit or intention.

29. The Commission has been able to work collaboratively with many groups and organizations which have been, or are likely to be, adversely affected by the Act. The introduction of the right to prepare non-binding guidelines is an example. The publication of the Insurance Guidelines in 1997 by the Human Rights Commission followed extensive consultation with the industry and people likely to be affected by the Act's provisions relating to insurance. Another example is the publication of a discussion paper on Human Rights and Special Needs Education in 1997. Due to a number of inquiries from parents of students with disabilities as well as from educators, the Commission sought to clarify the rights of students with disabilities to equal educational opportunities.

(ii) Extension of unlawful discrimination

30. Section 21 (1) of the Act created five new grounds of prohibited discrimination, namely:

(a) Disability;

(b) Employment status;

(c) Family status;

(d) Political opinion; and

(e) Sexual orientation.

(iii) Exceptions to the Human Rights Act 1993

31. The 1993 Act continues to provide for certain exceptions in the areas of prohibited discrimination. Information on exceptions in the area of employment is provided under article 6 (The right to work) (paras. 87 ff).

32. Section 151 (1) of the Human Rights Act 1993 states that the Act, except as expressly provided, does not limit or affect the provisions of any other Act or regulation that is in force in New Zealand. The Court in Coburn v. Human Rights Commission ((1994) 1 HRNZ 120, 151 (HC) Thorp J) has interpreted the relationship between section 151 (1) of the Act with other acts to mean that if the Human Rights Act contains a provision specifically dealing with an issue and the Human Rights Act is the later act a provision of another act contrary to the Human Rights Act will be overridden to the extent the Human Rights Act deals with the issue.

33. Section 151 (2) of the Act exempts Government from the application of the new grounds of prohibited discrimination added in 1993 in relation to government policies and practices. Section 151 (2) of the Human Rights Act 1993 was necessary to give the Government time to amend its policies and practices in accordance with the new prohibited grounds of discrimination. The provision is due to expire on 31 December 2001.

34. Section 153 (3) of the Act provides that nothing in it shall affect any enactment or rule of law, or any policy or administrative practice of the Government of New Zealand, that relates to immigration or that distinguishes between New Zealand citizens and other persons. The right to regulate immigration is an attribute of a sovereign State. If the Government seeks to select migrants who have certain attributes or qualities that it considers will be to the national advantage, the power to discriminate is required. The need for an exemption from the Human Rights Act provisions arises from the possibility that the provisions could hamper any immigration policy which aims to select migrants on the basis of particular individual qualities. Implicit within immigration policy generally is the right to discriminate between New Zealanders and others in relation to immigration issues, particularly rights of entry to New Zealand. While the scope of section 153 (3) is so wide as to include all immigration-related activity, the New Zealand Immigration Service applies the principles of the Human Rights Act in the development and administration of its internal policies (although the exemption technically applies to those as well) and in its dealings with the public.

(b) Review of legislation for consistency with Human Rights Act 1993

35. Further to paragraphs 27-30 above, pursuant to sections 5 (1) (i)-(k) of the Act, the Human Rights Commission was engaged in an examination of all current New Zealand Acts, regulations, government policies and administrative practices with a view to determining by 31 December 1998 whether they conflicted with the anti-discrimination provisions of the Human Rights Act or infringed the spirit or intention of the Act. This project was known as Consistency 2000.

36. Early in 1997 the Government became concerned about the resource implications of Consistency 2000 and started to look at the options for modifying aspects of the project. In

October 1997, the Government decided to revisit the Consistency 2000 project in light of the significant resources committed to the project, and preliminary indications that many inconsistencies found were repetitive or minor in nature.

37. The Government introduced a Human Rights Amendment Bill to Parliament on 19 August 1998 that would have relieved the Human Rights Commission of its statutory duty to report on the Consistency 2000 project; clarified the non-primacy of the Human Rights Act over other legislation; added new exceptions or clarifications to the Act for Government-related services in the areas of social welfare, health and defence; preserved age-linked retirement benefits; and designated a Women's Commissioner. However, this bill failed to gain sufficient support in Parliament to progress beyond the introduction stage of the legislative process.

38. Accordingly, the Government decided not to progress that bill further and introduced a second bill, the Human Rights Amendment Bill (No. 2), which was enacted on 8 September 1999 (Human Rights Amendment Act 1999). The Human Rights Amendment Act 1999, contains the following elements:

(a) The expiry date in respect of the Government's exemption from the new grounds in the Human Rights Act and the current status of the Act in relation to other legislation is extended from 31 December 1999 to 31 December 2001;

(b) The expiry date in respect of section 126B of the Social Security Act 1964 is extended from 31 December 1999 to 31 December 2001 - this provision exempts certain acts done in relation to the granting of a benefit or assistance from the application of the Human Rights Commission Act 1977 or the Human Rights Act 1993;

(c) The Minister of Justice is to report to Parliament on a six-monthly basis on progress in addressing significant areas of inconsistency between existing legislation and the Human Rights Act;

(d) The Human Rights Commission is empowered to comment on the Minister's report before it is presented to Parliament, with any such comment being included in the report; and

(e) Age-linked retirement benefits contained in employment contracts in force on 1 February 1999 will not be in breach of the Human Rights Act.

39. The primary purpose of the Human Rights Amendment Act 1999 is to preserve the Government's current position in relation to compliance with the Human Rights Act for a limited period in order to allow Parliament a reasonable period of time in which to consider the complex issues surrounding Government compliance with the Act.

40. In addition to the measures contained in the Human Rights Amendment Act 1999, the Government has undertaken to ensure that:

(a) All regulations made after 1 January 2000 are consistent with the Human Rights Act unless any inconsistency is specifically authorized in an Act of Parliament;

(b) All government policies and practices are consistent with the Human Rights Act except in the areas where exemptions have been proposed in the original Human Rights Amendment Bill 1998; and

(c) The Human Rights Commission is adequately resourced to carry out its role under the Human Rights Amendment Act 1999.

41. The Human Rights Commission presented its Consistency 2000 report to the Minister of Justice on 31 December 1998. Even though the full evaluation of all legislation, regulations, and policy and practices was not fully completed, the legislation, regulations, and policy and practices administered by six government departments (Department of Internal Affairs, Ministry of Research, Science and Technology, Department of Labour, Ministry of Cultural Affairs, Ministry of Transport, Ministry of Justice) were assessed. In these batches the Human Rights Commission did not find any serious violations of Part II of the Human Rights Act 1993. However, the Human Rights Commission identified some areas (for example, same-sex relationships, age of responsibility, retirement, family and dependents, language) which should be addressed systematically to avoid discrimination in that area. As part of the response to the report, the Government published a discussion paper on Same-Sex Couples and the Law[1] which invited the public to make submissions on various questions in regard to same-sex relationships. The paper discusses a range of legal matters relevant to same-sex couples, including the issue of marriage and formal recognition of the relationship. It does not suggest any law reform options, but rather seeks the community's views.

(c) New Zealand Bill of Rights Act 1990

42. In its concluding observations on New Zealand's initial report, the Committee expressed its concern that there is no reference to economic, social and cultural rights in the text of the New Zealand Bill of Rights Act 1990, and that this Act is in the form of an ordinary statute capable of being overridden by other legislation at any time. Further commentary on these issues is now provided in New Zealand's fourth periodic report under the International Covenant on Civil and Political Rights (paras. 3 (a) and 9 ff)[2].

(d) Privacy Act 1993

43. The Privacy Act 1993 contains 12 information privacy principles which apply to information collected or held about an individual in both the public and private sphere. A detailed description of the contents and operation of this Act is contained in New Zealand's third periodic report to the Human Rights Committee under the International Covenant on Civil and Political Rights (paras. 83-100), and updated in the fourth periodic report under that Covenant (paras. 124-135). The fourth periodic report under the International Covenant on Civil and Political Rights also contains in regard to the wider issue of privacy developments in regard to the review of the New Zealand Security Intelligence Service Act 1969 which took place in 1996 (paras. 136-141) and the passage of the Criminal Investigations (Blood Samples) Act 1995 (paras. 142-146).

4. Information and publicity concerning the Covenant and the country's report to the Committee

44. Following the presentation of New Zealand's initial report to the Committee, the Ministry of Foreign Affairs and Trade published Information Bulletin No. 49, Human Rights in New Zealand: Report to the United Nations Committee on Economic, Social and Cultural Rights in June 1994 (attached among the supplementary materials). It contains a full record of the Committee's consideration of New Zealand's initial report, the Committee's concluding observations on that report, and the text of the Covenant and New Zealand's reservations to it.

45. Copies of the Bulletin are available free of charge to members of the public upon application, as are copies of the full text of New Zealand's initial report. The Information Bulletin and texts of the Covenant are also freely available in libraries throughout the country.

46. Preparation of New Zealand's second periodic report was undertaken through consultation with a wide range of government departments and Crown agencies and with the interested public, which were helpful in shaping this Report. The Ministry sent out around 75 draft reports to the interested public and subsequently received 9 submissions on the draft report.

II. INFORMATION RELATING TO IMPLEMENTATION OF THE COVENANT

Response to the Committee's comments on New Zealand's initial report

47. In Part II, reference is made to significant developments in legislation, policies and practices relating to human rights and their implementation during and after the reporting period. Material requested in the revised general guidelines (see para. 3 above) is also included.

48. In the preparation of this report, regard has been given to the concerns, suggestions and recommendations expressed by the Committee in relation to New Zealand's Initial report under the Covenant. Comments made by the Committee are dealt with as follows in the report:

(a) Desirability of the incorporation of economic, social and cultural rights in the New Zealand Bill of Rights Act 1990 and desirability of a comprehensive Bill of Rights with superior law status. The Government decided against the inclusion of economic, social and cultural rights in the New Zealand Bill of Rights Act 1990 on the basis that such rights are implemented through other legislation and administration, and the common law (para. 50). In regard to the status of the New Zealand Bill of Rights Act, it has to be noted that the Act was the subject of extensive consultation when that measure was going through the legislative process. Support may develop for its enactment as superior law, but it is considered that the present systems in New Zealand provide an appropriate level of protection to fulfil, in practice, New Zealand's obligations under the Covenant. Extensive commentary on these issues are provided in New Zealand's fourth periodic report under the International Covenant on Civil and Political Rights (paras. 3 (a) and 9 ff);

(b) Concern that reforms in the social security and labour relations system negatively affect the enjoyment of economic, social and cultural rights. The Employment Relations

Act 2000, which repealed and replaced the Employment Contracts Act 1991, provides that employees may choose whether or not to belong to a union. Unions must be registered under the Act to engage in collective bargaining, to which a union must be a party. Employees who choose not to belong to a union may negotiate an individual employment agreement with their employer. The Act retains the right to strike, and it is strengthened in relation to multi-employer agreements;

(c) Concern about the disadvantaged position of Maori and Pacific Island people. There have been some improvements, but much remains to be done. The Government has launched various initiatives during the reporting period, for example, in the employment, health and education sectors (some with significant success) to reduce inequalities between the Maori, Pacific Island and Pakeha populations (see under articles 6, 7, 9, 12, 13);

(d) Keeping of statistical information as to the extent of malnutrition, hunger and homelessness. At the end of the reporting period the Ministry of Health conducted a National Nutrition Survey as a means of gaining more accurate current information on the nutritional status of New Zealanders (para 338). The 1996 Census contained a category "no fixed abode" to record the number of homeless people in New Zealand (para 358);

(e) Review of the impact of the Employment Contracts Act 1991 and related legislation. As recommended by the Committee in its concluding observations, the Government has continually monitored the effects of the Employment Contracts Act 1991 and related labour legislation through a wide range of methods (para. 184). The Government continues its commitment to assessing the impacts of employment legislation in its monitoring and evaluation of the Employment Relations Act 2000;

(f) Ratification of ILO Freedom of Association and Protection of the Rights to Organize Convention, 1948 (No. 87) Right to Organize and Collective Bargaining Convention, 1949 (No. 98) and reservation to the Covenant in relation to article 8. During the reporting period some questions remained about New Zealand's ability to ratify ILO Conventions Nos. 87 and 98. The prohibition on multi-employer strikes remained a barrier to their ratification, as did the restriction on the right to strike over the question of whether an employment contract will cover more than one employer. The same issues affect the Government's position concerning New Zealand's reservation in relation to article 8 (paras. 176-183);

(g) Statistics of educational qualifications of Maori and Pacific Island people and school drop-out rates disaggregated according to race. Relevant statistical information in regard to educational qualifications is given in the present report (paras. 507 ff, 514 ff and annex 20). While it is difficult to settle on a robust definition of school drop-outs, it is assumed for the purposes of the present report that the focus is on the percentage of students retained in the non-compulsory years of schooling. Statistical data are provided accordingly (para. 522).

Article 1 - The right of self-determination

49. As this article is identical with article 1 of the International Covenant on Civil and Political Rights, reference should be made to the relevant part of New Zealand's fourth periodic report to the Human Rights Committee regarding that Covenant (paras. 42 and 43), and to the further information regarding Tokelau set out in the last part of the present report (paras. 677-742).

Article 2 - Obligations of States parties and the right to non-discrimination

A. Progressive implementation

50. In its initial report under the Covenant, the Government outlined its commitment to the progressive implementation of the rights recognized by the Covenant. As indicated above in paragraphs 26 ff, this progress continued in the reporting period with the introduction of the Human Rights Act 1993 and the developments relating to the New Zealand Bill of Rights Act 1990. As to the mode of implementation, the New Zealand Government, together with other States parties to the International Covenant on Economic, Social and Cultural Rights, remarks that many of the norms enunciated therein do not lend themselves to translation into legislation or justiciable issues, but are statements of principle and objectives; and as the Committee has observed, the Government decided against inclusion of economic, social and cultural rights in the New Zealand Bill of Rights Act 1990. This was on the basis that such rights are implemented through other legislation and administration, and the common law. It may be noted, however, that such rights as are encompassed in the 1990 Act remain relevant in the economic, social and cultural context. The Human Rights Act 1993 protects, inter alia, the equal access to employment, accommodation, education, and goods and services.

51. New Zealand also seeks to implement these rights in its development cooperation policy. For instance, among the guiding principles of the policy framework for New Zealand Official Development Assistance (NZODA) is a commitment to the reduction of poverty. As the principle states:

> "A primary objective of NZODA is to enhance social cohesion by enlarging the economic and social choices of men and women. This includes efforts to increase the self reliance and standard of living of disadvantaged groups through improving their access to and control over resources."

52. Strategies employed to achieve NZODA's key objectives emphasize, among other things, greater attention to social development, especially basic education, health and population activities which together underpin economic development; activities which enhance gender equality and increase the equitable participation of women as well as men in development efforts; and reforms which provide a sound policy and regulatory framework for expanding sustainable economic activity and promote social development goals.

B. Non-discrimination provisions

53. The following pieces of legislation implement the principle of non-discrimination set out in the Covenant.

1. Human Rights Act 1993

54. The Human Rights Act 1993 deals with discrimination in the areas of employment (sects. 22-35), partnerships (sect. 36), industrial and professional associations, qualifying bodies, and vocational training bodies (sects. 37-41), as well as with discrimination in the area of education (sects. 57-60), the provision of land, housing and other accommodation (sects. 53-56) and the provision of goods and services (sects. 44-52).

55. Section 21 (1) sets out the prohibited grounds of discrimination: sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status and sexual orientation.

56. For a reference to the full text of the Human Rights Act, see annex B to New Zealand's third periodic report under the International Covenant on Civil and Political Rights.

2. New Zealand Bill of Rights Act 1990

57. Section 19 (1) of the New Zealand Bill of Rights Act 1990 states that "[e]veryone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993". According to section 3 the Act applies to acts of the legislative, executive or judicial branches of the Government and to any person or body in performance of any public function, power, or duty conferred or imposed on that person or body pursuant to law. Therefore, the New Zealand Bill of Rights Act protects citizens against any discriminatory act by the Government.

58. Section 5 of the Bill of Rights Act provides that the rights and freedoms contained in the Act may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. In determining whether a limitation is "demonstrably justified", the Ministry of Justice and the Crown Law Office followed during the reporting period the Canadian approach known as the Oakes Test (R v. Oakes, [1986] 1 SCR 103 (SCC)). However, the Court of Appeal in its Moonen decision has set out its own test (which is not substantially different from the Oakes Test) to determine whether or not a limitation is "demonstrably justified" (Moonen v. Film and Literature Board of Review (1999) 5 HRNZ 224, 234 para. [18]). The test is set out in New Zealand's fourth report under the International Covenant on Civil and Political Rights (para. 24).

59. Furthermore, section 7 of the New Zealand Bill of Rights Act 1990 provides for a vetting process for all legislation. Section 7 constitutes a safeguard designed to alert members of Parliament to legislation which may give rise to an inconsistency with the New Zealand Bill of Rights Act 1990 and, accordingly, to enable them to debate the proposals on that basis (see Mangawaro Enterprises Ltd. v. Attorney-General [1994] 2 NZLR 451, 457 (HC) Gallen J). The role of scrutinizing bills for consistency with the New Zealand Bill of Rights Act 1990 and

providing advice to the Attorney-General on the exercise of his or her duties under section 7 is performed by the Ministry of Justice (in the case of legislation being promoted by a minister other than the Minister of Justice), and by the Crown Law Office (in the case of legislation being promoted by the Minister of Justice). The vetting process is more fully explained in New Zealand's fourth report under the International Covenant on Civil and Political Rights (paras. 21-29).

3. Discrimination principles embedded in other legislation

60. In addition, specific provisions which in effect stipulate a norm of non-discrimination may be embedded in other legislation. In respect of the right to work and employment, sections 27 and 28 of the Employment Contracts Act 1991 (as amended in 1992) should be mentioned as they relate to discrimination in employment, as do sections 2A and 3 of the Equal Pay Act 1972. An example in regard to education is section 8 of the Education Act 1989 which states that, except as provided in the Act, persons who have special educational needs (whether because of disability or otherwise) have the same right to enrol and receive education at State schools as people who do not. Another example can be found in section 56 of the State Sector Act 1988 which requires the chief executives of government departments, in acting as good employers, to operate an equal employment opportunities programme defined as one "aimed at the identification and elimination of all aspects of policies, procedures and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons". Another example is section 12 of the Residential Tenancies Act 1986 which specifically declares it to be an unlawful act to discriminate against any person in the respect of the grant, continuance, extension, variation, termination or renewal of a tenancy agreement in contravention of the Human Rights Act 1993; and to give instruction or state an intention to that end.

C. Guarantee of economic, social, and cultural rights to non-nationals

61. A comprehensive, detailed study is not available as to the exact extent to which non-nationals are guaranteed the rights recognized in the Covenant. However, it has already been indicated, in New Zealand's initial report, that New Zealand's human rights legislation, like all New Zealand laws, applies in broad terms to everyone within the jurisdiction.

62. It should also be noted that section 21(1)(g) of the Human Rights Act 1993 provides that "ethnic origins, which includes nationality or citizenship" are among the grounds of discrimination expressly prohibited by that Act, and that, as already described, the Act then proceeds to render such discrimination (together with the other prohibited, defined grounds of discrimination) unlawful in employment; in partnerships; in entry to, and treatment by, industrial and professional associations, qualifying bodies and vocational training bodies; in access to places, vehicles and facilities; in provision of goods and services; in provision of land, housing, and other accommodation; and in access to educational establishments. It is, however, also provided in section 153 (3) of the Human Rights Act that nothing in the Act shall affect any enactment or rule of law, or any policy or administrative practice of the Government of New Zealand, that relates to immigration or that distinguishes between New Zealand citizens and other persons.

63. In relation to legislation of the latter kind it should be observed that, in common with the policy and practice of many countries, New Zealand limits the provision of social security benefits under the Social Security Act 1964 to persons lawfully resident in New Zealand, with the result that in general (with an exception as to emergency benefits in certain restricted circumstances) non-nationals are only entitled if they are present in New Zealand lawfully. This restriction ensures that the integrity of New Zealand's immigration law is maintained; the availability of social security benefits to those unlawfully in New Zealand might provide incentives to flout immigration requirements. New Zealand legislation similarly, as noted in the initial report on the Covenant (para. 37), places restrictions on the right of persons who are not New Zealand citizens to undertake employment in New Zealand, this being linked to appropriate conformity with New Zealand's immigration legislation. Specifically, section 50 of the Immigration Act 1987 sets out the requirements for undertaking employment for non-citizens. Those who hold a residence permit, a work permit or any other type of temporary permit authorizing employment in accordance with the Act, as well as those who are exempt under the Act from the requirement to hold a permit, may take on employment. Section 11 of the Act sets out the terms for exemption from the requirement to hold a permit, for example, diplomats, members of the armed forces of another country in certain circumstances.[3]

64. Free primary and secondary education at State schools is provided, under the Education Act 1989, to New Zealand citizens and to foreign nationals who hold a residence permit entitling them to stay in New Zealand indefinitely. Limited institutional and financial resources mean that foreign students not falling into the latter category are subject to conditions under the Act regarding the modalities of their admission to State schools, and must pay fees (section 4B of the Education Act 1989). Exemptions as to enrolment conditions and fees are available under section 4C of the Education Act 1989 to, for example, foreign students studying in New Zealand under an exchange programme approved by the New Zealand Government and foreign students who are dependent children of persons holding an unexpired work permit granted under the Immigration Act. Similarly, various conditions concerning admission and fees for tertiary education institutions are also laid down in the Education Act 1989 in respect of foreign students who do not hold a permanent residence permit (see further under article 13 below).

65. It should be added that in general, when reviewing legislation, it has been the policy of the New Zealand Government, over many years now, to seek to eliminate unnecessary legal distinctions between New Zealand citizens and foreign nationals, particularly foreign nationals who are permanently resident here. According to section 74(1) of the Electoral Act 1993, for example, a person who is a permanent resident is qualified to be registered as an elector of an electoral district if that person has at some time resided continuously in New Zealand for a period of not less than one year.

Article 3 - The right of men and women to equal enjoyment of rights

66. New Zealand is a State party to the Convention on the Elimination of All Forms of Discrimination against Women and presented its combined third and fourth periodic reports thereunder to the relevant Committee, covering the period up to early 1998, in July 1998. New Zealand's reservations to this convention regarding women in combat and maternity leave with pay have remained during the reporting period. For further information with respect to

equal rights for men and women and limitations faced in the realization of these rights, reference should be made to the above report. Further relevant information is set out under specific articles below.

Articles 4 and 5 - Restriction of limitations to rights under the Covenant, and non-derogation of rights

67. To the extent that particular rights and freedoms under the Covenant have been limited by legislation or regulation those will be dealt with under the relevant article. The information given in paragraph 58 above on the application of section 5 of the New Zealand Bill of Rights Act 1990 is referred to as a general indication of how limitation issues might be expected to be dealt with.

Article 6 - The right to work

A. Summary of key developments

68. This section of the report centres on the following key developments:

(a) Important reductions in unemployment figures;

(b) Passage of the Employment Contracts Act 1991;

(c) Passage of the Human Rights Act 1993 which extends protection against discrimination in employment;

(d) Development of an employment policy focused on the duration of unemployment combined with an economic policy aimed at reducing the numbers of unemployed;

(e) New measures to tackle the continuing problem of disproportionate representation by Maori and Pacific Island people in relation to unemployment, low salary levels and poor educational and technical qualifications.[4]

B. Situation, level and trends of employment, unemployment

69. Detailed information on the level and trends of employment over the period is provided in New Zealand's reports on the ILO Employment Policy Convention, 1964 (No. 122) for the years 1990-1992, 1992-1994, 1994-1996 and 1996-1998. Annex 1 to the present report provides some statistical breakdowns of the unemployed that may be of interest. These are taken from New Zealand's Household Labour Force Survey for the period ended June 1999.

70. Information on underemployment is provided in paragraphs 91 ff below. Annex 2 contains a table showing the proportion of part-time workers over the period 1987-1999 who would prefer to work more hours or who are looking for full-time work.

71. As to particular categories of workers, Annex 1 and the ILO reports show that young people have continued to have the highest unemployment rates. Around half (47.8 per cent) of the unemployed are aged 29 or younger, whereas only 13.2 per cent of the unemployed are aged 50 or over.

72. As the New Zealand report on the ILO Employment Policy Convention, 1964 (No. 122) for 1996-1998 outlines, Maori and Pacific Island people continue to have high rates of unemployment, and also seem to have been disproportionately affected by the slow-down in the economy. The Maori unemployment rate rose from 15.3 per cent in March 1996 to 19.5 per cent in December 1998. The more recent rises in Maori unemployment can be linked to an increasing participation rate. In fact, over the period March 1996 to March 1998, Maori employment grew by 12,700 persons, an increase of 9.6 per cent, compared to a 1.4 per cent fall in Pakeha/European employment. By June 1999 the unemployment rate of Maori had declined to 18.2 per cent. For statistical data concerning the unemployment of Maori and Pacific Island peoples see annex 1.

73. Moving to female unemployment, the New Zealand Official Yearbook 1998 records that, in the year ended December 1997, "the unemployment rates for males and females were very similar, at 6.6 per cent and 6.7 per cent respectively". In June 1999 the female unemployment rate was 6.7 per cent while the male unemployment rate was 7.3 per cent. The female unemployment rate has been equal to or beneath the male unemployment rate since December 1997. Additional information is available in the ILO reports mentioned in paragraph 69 above, as well as in New Zealand's combined third and fourth periodic reports on the Convention on the Elimination of All Forms of Discrimination against Women (see the information provided under Article 11 (Employment) of that convention). It will, incidentally, be noticed from the latter that "while Maori and Pacific women, and women from 'other' ethnic groups face higher rates of unemployment than European/Pakeha women, there has been a significant improvement in the unemployment rates for Maori and Pacific women in the last six years".

74. Until recently, there has been limited information available on disability in New Zealand. However, Statistics New Zealand carried out Disability Surveys in 1996 and 1997. These provide the first national, population-based data on disability in this country. Based on the information in those surveys, relevant employment trends have been assessed as follows:

> "Approximately 213,800 adults with disabilities are employed. This represents 37 per cent of adults with disabilities in households. By comparison, 66 per cent of adults without disabilities are employed. Of those people with disabilities who are employed, 23 per cent require special equipment or services to be able to work in their present job. Adults with disabilities are more likely not to be in the labour force. While just over a quarter of the total working age population (15 years and over) are not in the labour force, more than 60 per cent (348,400) of adults with disabilities do not work and are not actively seeking employment. More than 50 per cent of these people are under 65 years of age." [5]

C. Policies and measures to achieve steady economic development and full productive employment; freedom of choice of employment

1. Macroeconomic level

75. During the review period, New Zealand has continued with the structural reform process that began in the mid-1980s. On the macroeconomic level, policies have aimed at achieving low inflation and a sound fiscal position, while microeconomic reforms have aimed at introducing more competition into the economy. Continuation of these policies was considered necessary to promote a stable and competitive environment which would allow business to invest and expand. The commitment to reducing unemployment also continued, with assistance targeted towards those likely to fall into unemployment and the long-term unemployed.

76. In the belief that sustainable growth in output and employment needed the underpinning of prudent national fiscal management on a clear long-term legislative basis, an important innovation was introduced during the period in the form of the Fiscal Responsibility Act 1994 described in New Zealand's report on the ILO Employment Policy Convention, 1964 (No. 122) for 1996-1998 (p. 4). Other major macroeconomic measures remained as before: the Reserve Bank Act 1989 (providing for the Reserve Bank of New Zealand to be responsible for formulating and implementing monetary policy designed to promote stability in the general level of prices), and the Commerce Act 1986 (aimed at promoting and facilitating competition in markets to achieve greater economic efficiency).

2. Employment Contracts Act 1991

77. The most significant development of the period, however, related to employment as such - the Employment Contracts Act 1991[9] which introduced a new framework for industrial relations in the interest of achieving a more flexible and responsive labour market. This Act was designed to give employees and employers more choice than previously in terms of who represents them, what type of employment contract should apply and what the contract should contain. Under the Employment Contracts Act 1991 the same legislative provisions cover the establishment of workers' and employers' organizations. The overall objective of the Act was to promote an efficient labour market. The Act's main features were:

(a) The right of both employees and employers to choose whether or not they wish to belong to an employers' organization or to an employees' organization (such as a union) and, if so, which organization;

(b) Choice of representation for both employees and employers;

(c) No restrictions on when and where collective bargaining occurs;

(d) Representatives of a party to negotiations are required to establish their authority to represent those parties. The other parties to negotiations must recognize the authority of those representatives once it has been established;

(e) Representatives are required to agree in advance with the parties that they represent on a binding process for the ratification of any proposed collective agreement that the representatives may reach;

(f) The provision of two specialist institutions, the Employment Court and the Employment Tribunal, with exclusive jurisdiction over matters founded on employment contracts;

(g) The inclusion of procedures for resolution of personal grievances, and other disputes in all employment contracts. The Act established that personal grievances are distinguishable from disputes by their subject-matter rather than by the number of employees involved;

(h) Coverage of all employees;

(i) Right to strike and lockout in relation to negotiations for a collective employment contract, and in relation to health and safety issues in certain circumstances.

78. A discussion of the social and economic factors underlying the introduction of the Employment Contracts Act, taken from the New Zealand Official Yearbook 1992, is attached among the supplementary materials. This includes further information on the two specialist institutions referred to above - the Employment Tribunal and the Employment Court - set up under the 1991 Act to resolve problems which may arise in the negotiation of employment contracts. It should be added that the State Sector Act 1988 and related legislation provided that the Employment Contracts Act applied to the State sector, with some special provisions applying to agencies in which the Government has a collective interest, particularly agencies that are State funded and accountable to the Crown.

79. The erstwhile Government considered that the greater flexibility promoted by the Employment Contracts Act contributed to the continued growth of employment experienced by New Zealand by enabling employers, employees and their representatives to negotiate workplace arrangements that best met their respective and collective needs, and to establish conditions that provided for the most productive method of working in each particular enterprise. The freedoms provided by the Act have been supported by clear statutory protection for employees in a number of specific and crucial areas. For example, existing statutory minimum conditions of employment were maintained when the Act was introduced, and in some cases increased.[7] The Employment Relations Act 2000 came into force in October 2000, replacing the previous Employment Contracts Act 1991. The overall objectives of the Employment Relations Act are:

> "(a) To build productive employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment and of the employment relationship:
>
> "(i) by recognizing that employment relationships must be built on good faith behaviour; and

"(ii) by acknowledging and addressing the inherent inequality of bargaining power in employment relationships; and

"(iii) by promoting collective bargaining; and

"(iv) by promoting the integrity of individual choice; and

"(v) by promoting mediation as the primary problem-solving mechanism; and

"(vi) by reducing the need for judicial intervention; and

"(vii) to promote observance of the principles underlying ILO Conventions 87 and 88."

80. The Act's main features are:

(a) Parties to an employment relationship are to deal with each other in good faith;

(b) Protection of freedom of association;

(c) Protection against discrimination and sexual and racial harassment in employment;

(d) Recognition of the role of unions in promoting their members' collective employment interests;

(e) Provision of reasonable access to workplaces for representatives of unions for purposes related to employment and union business;

(f) Provision of paid leave to certain employees to increase their knowledge about employment relations;

(g) Recognition that the requirement of good faith behaviour does not preclude certain strikes and lockouts being lawful;

(h) Recognition that in resolving employment relationship problems, access to information and mediation services is of primary importance, and recognition of the importance of reinstatement as a remedy;

(i) Establishment of procedures and institutions that support successful employment relationships and the good faith obligations that underpin them;

(j) Recognition that judicial intervention will be required in some cases and that judicial intervention at the lowest level needs to be that of a specialist decision-making body that is not inhibited by strict procedural requirements.

81. The Employment Relations Act provides for the negotiation of individual and collective employment agreements. A union must be a party to a collective employment agreement, and the Act provides for negotiation of multiparty agreements. Employees may choose not to belong to a union and enter into an individual employment agreement with their employer. The Act is built on the obligation of good faith behaviour in all aspects of the employment environment and specifically in relation to bargaining for a collective employment agreement.

82. After the 1996 general election, the key objectives of the new Coalition Government's employment policy were to reduce the percentage of long-term unemployed, and to involve job-seekers while unemployed in part-time community work and training. Employment policy was to focus on duration of unemployment, while economic policy was to be used to reduce the numbers of unemployed. By October 1998, the following key initiatives (described further in paras. 186 ff below) had been implemented:

(a) The Community Wage had replaced all forms of unemployment benefit, the training benefit and the sickness benefit as the main form of income support for those without a job. In return for the Community Wage, job-seekers had to be available for and actively seeking work (unless they had a good reason not to, such as sickness). This included participation in programmes that could improve their chances of finding work, such as unpaid community work;

(b) The New Zealand Employment Service, the New Zealand Income Support Service and the Community Employment Group were merged to form Work and Income Support New Zealand (WINZ), a "one-stop shop" delivering both income support and employment services (see also para. 190 below);

(c) A more regionally driven approach to achieving employment policy objectives was furthered within WINZ by establishing Regional Employment Commissioners. The Regional Employment Commissioners have a key role in determining how employment services are delivered in their regions.

83. Given that, as already indicated above in paragraph 72, unemployment rates amongst Maori and Pacific Island peoples were higher than those of other groups in society even while aggregate unemployment was falling in the reporting period, an important part of the task of a 1993 Prime Ministerial Task Force on Employment was to devise and foster action to address this problem. The measures concerned are detailed in New Zealand's Reports on the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) for 1995-1997 (pp. 3, 4).

84. The above reports also describe initiatives taken - whether by or outside the Prime Ministerial Task Force on Employment - regarding the employment/unemployment of youth and disabled persons. The Workbridge programme, for example, is a specialist employment and training placement service for people with disabilities (see page 9 of the 1995-1997 report and page 7 of the 1997-1999 report).[8]

85. Measures taken to enhance the employment of women over most of the period covered by the present report are described in New Zealand's second periodic report and combined third and fourth periodic reports on the Convention on the Elimination of All Forms of Discrimination against Women in the context of article 11 of that Convention.

D. Discrimination in employment

1. Legislation overview

86. During the period under review, a considerable step forward was taken by means of the passage of the Human Rights Act 1993 (see paras. 26 ff above). The Human Rights Act 1993 strengthened the means of dealing with discrimination in employment by broadening the prohibited grounds of discrimination and improving the enforcement machinery. In addition, the Employment Contracts Act 1991 also extended the coverage of the relevant anti-discrimination provisions to apply to all employees. The Employment Relations Act 2000, which repealed and replaced the Employment Contracts Act 1991, contains additional prohibited grounds of discrimination.

87. Section 22 of the Human Rights Act 1993 now prohibits discrimination on the grounds of sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status and sexual orientation with regard to hiring, offering of conditions of employment, firing and retiring of employees. It is also unlawful to advertise in such a way which indicates an intention to breach the non-discrimination provisions of the Act (sect. 67).

88. Exceptions to the discrimination provisions in relation to access to employment are provided for in sections 24 to 35 of the Human Rights Act 1993. These exceptions are substantially the same as in the preceding statutes (the Race Relations Act 1971, the Human Rights Commission Act 1977) but include additional exceptions to complement the new grounds of prohibited discrimination:

(a) In respect of discrimination on the ground of disability (sect. 29), exemptions apply:

(i) Where the person can only perform duties with the aid of special facilities and it is unreasonable to expect the employer to provide those facilities;

(ii) Where because of the working environment or nature of duties there is an unreasonable risk of harm to the person or others if that person performed the duties;

(b) In respect of political opinion, discrimination is allowed where the position is a political adviser to a member or a candidate for election as a member of Parliament or of a local authority, or a member of staff of a political party (sect. 31);

(c) Discrimination on grounds of family status is allowed if there would be a reporting relationship or risk of detrimental collusion between a person and his/her spouse or a relative (sect. 32).

89. The full range of exceptions (including the foregoing) is set out in New Zealand's report on the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) for 1992-1994 (pp. 8-12). As to the practical effect of section 29 of the Human Rights Act 1993 in relation to discrimination on the ground of disability, reference may be made to the commentary and further information given by the Government in New Zealand's report on the same convention for 1994-1995 (pp. 10, 11).

90. Affirmative action programmes continue to be allowed under section 73 of the Human Rights Act 1993. In the reporting period the Complaints Review Tribunal decided in Amaltal Fishing v. Nelson Polytechnic (No. 2) ((1994) 2 HRNZ 225, 246) that in determining whether such a programme was lawful it must look at the aspirations of the group or groups which are intended to be advanced and then to determine "whether, on the balance of probabilities, those persons need or might reasonably be supposed to need, assistance or advancement in order to achieve an equal place with other members of the community with similar aspirations". In that case, the Tribunal held that a vocational training programme for Maori only did not pass muster under section 73, because of the extremely limited evidence before the Tribunal. It was not satisfied on the balance of probabilities that the Polytechnic had shown that its Maori students needed the special course to succeed.

91. Any breach of the Human Rights Act 1993 can be the subject of an investigation by the Complaints Division of the Human Rights Commission, which is constituted by the Race Relations Conciliator and not more than three other Commissioners of the Human Rights Commission designated by the Chief Commissioner. To facilitate an initial focus on settlement by conciliation the Complaints Division may call the parties to a conciliation conference. If no agreement is reached the matter may be referred to the Proceedings Commissioner for the instigation of proceedings before the Complaints Review Tribunal.

92. In the area of discrimination in employment the Human Rights Act 1993 complemented the Employment Contracts Act 1991. Under the latter, discrimination on the grounds of colour, race, ethnic or national origin, sex, marital status, religious or ethical belief, or age was prohibited. In addition, employees had grounds for a personal grievance claim where they were dismissed or otherwise affected to their disadvantage by an unjustified action (which may include other types of discrimination) by their employer.

93. Employees who consider they have been discriminated against can choose to take a personal grievance claim to the Employment Tribunal set up under the 1991 Act, rather than taking a complaint to the Human Rights Commission. Furthermore, under the Employment Contracts Act 1991 an employee could still elect to bring an action at common law rather than invoking the personal grievance procedure. An employee cannot use both procedures for the same complaint. The Employment Contracts Act 1991 provided a standard procedure for dealing with personal grievances, which was made part of every employment contract, unless the parties negotiated an alternative effective procedure which was consistent with the requirements set out in the legislation. The Employment Relations Act 2000 retains the ability of employees

who consider they have been discriminated against in their employment to claim a personal grievance under the Act, or to make a complaint under the Human Rights Act. Every employment agreement entered into under the Employment Relations Act must contain an explanation of the services available for the resolution of employment relationship problems, including personal grievances. Institutional arrangements under the Act include the Mediation Services and the investigative Employment Relations Authority.

94. In New Zealand's report under the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) 1995-1997 (page 9) it has been noted that as a result of exemptions under sections 151 and 152 of the Human Rights Act, the New Zealand Government has not, in regard to its policies and practices in the period under review, been subject to the prohibition under that Act of discrimination on the grounds of disability, age, political opinion, employment status, family status and sexual orientation. The same report provides information, however, on the obligation nonetheless placed on the Government and its departments, under the State Sector Act 1988, to operate a good employer policy (with the concomitant obligation to avoid and address discrimination). In addition, the Government was bound during the reporting period by the Employment Contracts Act 1991 provisions on discrimination and was subject to the procedures of that Act in relation to all such discrimination. Finally, the Government is subject to the New Zealand Bill of Rights Act 1990 in all its activities, including employment. Section 19 (1) of the Act states that "[e]veryone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993". Section 4 of the New Zealand Bill of Rights Act 1990 protects other enactments from being overridden by the Act. Therefore, the Government and the State sector cannot have discriminatory employment practices in place unless they are permitted explicitly or impliedly by statute. The Employment Relations Act 2000 retains the protection for State sector employees against discrimination in employment, and contains the additional prohibited grounds of discrimination of disability, political opinion, employment status, family status and sexual orientation.

2. Case law

95. In Northern Regional Health Authority v. Human Rights Commission ((1997) 4 HRNZ 37 (HC) Cartwright J) the court held that the policy of the Northern Regional Health Authority to issue general practitioner service contracts only to medical practitioners with tertiary qualifications that were obtained from a New Zealand university, unless its patient-access criteria could not be met from the pool of New Zealand graduates, was discriminatory under the Human Rights Act 1993 as well as under the New Zealand Bill of Rights Act 1990. The court held that the policy was indirectly discriminatory against foreign-born doctors now living in New Zealand and qualified to practise here.

96. The leading case in regard to discrimination in employment is NZ Workers Union IUOW v. Sarita Farm Partnership ([1991] 1 ERNZ 510 (EC) Goddard CJ). Although this case was decided under the Labour Relations Act 1987, the ratio of the decision is applicable in regard to the Employment Contracts Act 1991. In this case a worker was dismissed because of his union activities. The Court established that it must look for proof of causal connection between the dismissal and the alleged prejudice in the sense that the prejudice in issue must be shown to have been the reason which actuated the dismissal ("but for" test) (pages 516 ff).

E. Protection against arbitrary termination of employment

97. With reference to New Zealand's initial report (paras. 100 ff), it should be noted that the Employment Contracts Act 1991 replaced the provisions of the Labour Relations Act 1987 in determining procedures for redressing unjustifiable dismissals. Under the 1987 Act, access to statutory personal grievance procedures (which cover unjustified dismissal, unjustifiable actions by the employer which disadvantage the employee, discrimination, sexual harassment and duress related to membership of an employee's organization) was generally restricted to union members. Non-union members relied on common law actions and remedies. The Employment Contracts Act 1991 provided that every employment contract must contain effective personal grievance procedures to deal with situations in which an employee believes that they have been justifiably dismissed, or otherwise treated unjustifiably, as set out in the Act. The Act provided a standard procedure for dealing with personal grievances, which applied if the relevant contract did not contain its own procedure, or to the extent that such a procedure was inconsistent with certain provisions of the Act, for example those dealing with remedies. The Employment Relations Act retains protections against unjustified dismissal and disadvantage by an unjustifiable action of an employer, and provides that all employment agreements must contain an explanation of the services available for the resolution of employment relationship problems, including personal grievances.

98. Personal grievance provisions apply to all employees (regardless of age, length of service, occupation or hours of work), with the exception of the armed forces or sworn members of the police force who have their own legislative provisions.

F. Technical and vocational guidance and training programmes

99. Part of the Government's policy in seeking to achieve an expanding economy with full employment has been to foster education and training schemes aimed at developing a skilled and flexible labour force better capable of meeting the needs of an internationally competitive economy.

100. As foreshadowed in New Zealand's initial report under the Covenant, the delivery of technical and vocational guidance and training programmes has accordingly undergone substantial reform during the reporting period. The changes have been aimed at creating an integrated and accessible system to enable New Zealanders to gain the skills they require in the workplace. One important component of this is the new National Qualifications Framework, which seeks to bring together industry, senior secondary, and tertiary education into a single, coordinated system designed to foster lifelong learning. It offers a variety of entry points and pathways for people to build towards national qualifications at any age or stage in their careers. The main legislative change has been the passage of the Industry Training Act 1992, which now governs this area of activity. It is directed towards devolution of responsibility for training to individual employers and employees and the integration of technical and vocational training programmes into a wider educational framework under a new body, the Education and Training Support Agency.

101. These developments are more fully outlined under article 13 below. More generally, however, the erstwhile Government's major labour market assistance measures (training

programmes and otherwise) developed during and as at the end of the period under review are set out in detail in appendix 2 to the New Zealand Report on the ILO Employment Policy Convention, 1964 (No. 122) for 1996-1998. It will be seen from this appendix that a very wide range of training and vocational programmes have come into being, covering an extensive variety of the age, ethnic, gender or other needs identified above.

G. Underemployment, and multiple occupation

102. Measurement of underemployment in New Zealand is difficult. Although the major indicator - the quarterly Household Labour Force Survey - is a reasonably robust measure of employment and unemployment, it does not conform to the requirements of the ILO in respect of its measure of underemployment. The measure does not include a comparison with the usual hours worked in the industry of the employee being surveyed, nor whether the employee is actively seeking more hours of work. At present questions are simply asked about whether part-time employees desire more hours or a full-time job. Statistics suggest that many women wanted more working hours. In 1990 the number of women workers who worked part-time wanting additional hours was 12.4 per cent. By 1996, this had risen to 24 per cent of female part-time workers. However, more resources are required before the questions can be refined to fit ILO requirements.

103. The nature of the labour market has, as with many other countries, continued to show strong growth in part-time employment compared with full-time employment (although there has been a growth in both full-time and part-time employment). This trend has been in evidence for many years and represents a shift in the labour market towards the employment of women and more flexible employment arrangements. These changes (that is an increase in part-time work) were apparent before the introduction of the reforms outlined above, designed to allow for greater decentralization of labour market decision-making. The extent of the shift to forms of employment that are not full-time and permanent is hard to assess, as the available data collection instruments do not gather information on the extent of casual or temporary employment, or such forms as independent contracting. However, there seems to be at least anecdotal evidence of a much greater incidence of contracting-out of work. This has been seen not only in the private sector but also in the public sector. Because of the difficulties in collecting reliable data, the rise in employment may mask underemployment.

104. Annex 2 contains a table which shows the proportions of part-time workers over the period 1987-1999 who would prefer to work more hours or who are looking for full-time work.

105. Specific data are not available as to the proportion of the working population that may hold more than one full-time job in order to secure an adequate standard of living for themselves and their families. Information is available, however, to show what hours are usually worked weekly, in all jobs, by the employed. Such an analysis, covering the period 1987-1998, is published in Labour Market Statistics 1998 (produced by Statistics New Zealand - attached as annex 3). The hours worked beyond the 40-hour week that has for many years been the predominant norm in New Zealand appear in the main to reflect hours in the same job rather than the undertaking of several different jobs. For example, the December quarter 1998 Household Labour Force Survey indicated that only 4.3 per cent of those employed had more than one job.

Article 7 - The right to just and favourable conditions of work

A. Summary of key developments

106. This section of the report centres on the following key developments:

(a) Passage of the Employment Contracts Act 1991 under which rates of pay and conditions of employment were determined by agreement through negotiation between employers and employees;

(b) Passage of the Health and Safety in Employment Act 1992 which provides a framework for employers to take responsibility for managing risks in the workplace, based on a set of incentives and sanctions;

(c) The introduction of the Employment Relations Act 2000, which repealed and replaced the Employment Contracts Act 1991, again fundamentally altered the industrial relations regime.

B. Methods for fixing wages

107. As explained under the previous article, the most considerable changes in labour market conditions during the period were those effected by the Employment Contracts Act 1991. The principal rationale of this act was to encourage decentralization of decision-making to the enterprise and the individual by allowing employers and employees to adopt individual or collective contracts as their needs dictated (an innovation which contributed to increased competitiveness, and economic and employment growth) as may be seen from the following summary of the new system given in the New Zealand Official Yearbook 1992 (enclosed in the supplementary materials):

> "New bargaining arrangements - there was no longer an annual 'wage round' where workers, unions and employers used to renegotiate the wages and conditions in their specific industry or occupation each year. Neither did the Tripartite Wage Conference take place as it had done in previous years before the annual wage round. Wage fixing was by comparison completely decentralized. The emphasis was instead on employers and employees having a direct say in bargaining, using bargaining arrangements appropriate to their organization and taking responsibility for their own agreements. In particular:
>
> - Every employer had an employment contract with every employee, either an individual contract or a collective contract (legally speaking, this has always been the case).
>
> - Employees and employers had the right to authorize another person, group or organization to represent them in negotiations for an employment contract.
>
> - Bargaining agents established their authority to represent their employee or employer client and that authority was recognized by the other party.

- Anybody could act as a bargaining agent, provided they had not been convicted of an offence punishable by 5 years or more in prison, within the last 10 years.[9]

- Employees were required to formulate, together with their bargaining agent, an agreed procedure for the ratification of any settlement negotiated by the agent.

- Prospective and authorized agents had limited rights of access to employees in the workplace in order to assist the process of negotiation where the employer agrees and where normal operation of the workplace was not disrupted.

- Authorized agents could become party to an employment contract when the employer, employees and agent concerned all agreed.

"The bargaining arrangements gave employers and employees maximum latitude to negotiate about any matter they chose, including their bargaining arrangements. Within this framework employees had the ability to negotiate individual contracts, and employers had the ability to negotiate single employer arrangements. Collective contracts could be negotiated between any number of employers and employees, and would only bind those who agreed to be included. The parties could agree to include a clause in a collective contract that new employees were permitted to join the contract, with the agreement of the new employee at the time the employment commenced.

"Those covered by awards and agreements made under the Labour Relations Act became covered by collective contracts under the new Act. When those awards and agreements expired, employees covered by them were covered by an individual contract based on the expired award or agreement. New collective or individual contracts were able to be negotiated to replace the old award or agreement. The Employment Relations Act 2000, which repealed and replaced the Employment Contracts Act 1991, provides for the negotiation of collective or individual employment agreements. Collective agreements may only be negotiated between employers and unions registered under the Act, and collective bargaining must be conducted in good faith. New employees may choose, where there is an applicable collective agreement, to join the union and be covered by that collective agreement, or to enter into an individual employment agreement with their employer."

108. Under the Employment Contracts Act 1991, rates of pay were thus determined by agreement by negotiation between employers, employees and their representatives, and the process of negotiation was subject to the requirements of the Act. Under the Act, parties were, as indicated above, bound only by the terms and conditions to which they agreed. However, there were a number of other statutory provisions[10] (designated by the Government as the Minimum Code of Employment) which underpinned employment contracts as statutory minimum entitlements (such as the minimum wage as set out in the Minimum Wage Act 1983 - see below paras. 112 ff). Under the Employment Relations Act 2000, rates of pay were similarly negotiated by employers, unions and employees, subject to statutory minimum entitlements.

109. Once agreement had been reached, terms and conditions could not be changed without the agreement of both parties: they could not be altered unilaterally. In addition, parties or their

representatives could enforce their entitlements under their employment contracts through the Employment Tribunal (see para. 77 above). Terms and conditions of employment negotiated under the Employment Relations Act can similarly only be altered by agreement and are enforceable under the Act.

110. Other comments concerning negotiation pursuant to the Employment Contracts Act 1991 and the Employment Relations Act 2000 are provided under article 8 below.

111. The State Sector Act 1988, as amended in 1991, applied the Employment Contracts Act 1991 to the public sector. An exception, however, existed in regard to the armed forces. Under the Defence Act 1990, the Chief of the Defence Force has a statutory responsibility to determine conditions of service of the armed forces, in consultation with the State Services Commission. The police are covered only to a certain extent by the Employment Contracts Act 1991 and the Employment Relations Act 2000 (see below paras. 174, 175).

C. Minimum wages

1. General

112. As mentioned, payment of at least the minimum wage is one of the statutory minimum employment conditions.

113. The rate of pay determined through negotiation must meet the requirements of the Minimum Wage Act 1983. The minimum wage rate is reviewed annually by the Minister of Labour. This review process involves a careful and thorough examination of all relevant issues and information such as looking at trends (for example, the level of inflation); the levels of unemployment and the unemployment benefit; general wage trends and other factors in order to find the best balance of economic and equity considerations. Submissions are sought each year from the central organizations of employers and employees, the New Zealand Employers Federation and the New Zealand Council of Trade Unions.

114. There have been a number of Minimum Wage Orders in force during the reporting period. These are described in and copies are attached to the New Zealand Report on ILO Minimum Wage Fixing Machinery Convention, 1928 (No. 26) for 1 July 1992 to 30 June 1997. In 1999 the adult hourly minimum wage was $7.00 and the minimum adult weekly wage was $280.00.

115. Within the reporting period, the Minimum Wage Order 1994 introduced a minimum youth rate for employees aged 16 to 19 for the first time. The primary purpose of introducing a statutory minimum wage for young people at the level set was to prevent the exploitation of young people while avoiding adverse effects on the employment of young people. In 1999 the youth minimum hourly wage (set at 60 per cent of the adult rate) was $4.20 and the youth weekly minimum wage was $168.00 (under the Minimum Wage Order 1997 replacing the 1995 Order).

116. Under the Minimum Wage Act 1983, employers and workers cannot contract out of the minimum wage except in limited circumstances provided for by the issue of under-rate workers

permits under the Act, and by exemptions for people with disabilities under the Disabled Persons Employment Promotion Act 1960. These circumstances are explained in New Zealand's report on the ILO Minimum Wage Fixing Machinery Convention, 1928 (No. 26) (page 4).[11] In addition, the Minimum Wage (Industry Training) Regulations 1999 provide revised guidelines on situations where exemptions from the obligation to pay at least the minimum wage are available for employees involved in formal training programmes.

2. Temporal development of average and minimum wages

117. The table attached as annex 4 sets out the development of average and minimum wages 10 years ago, 5 years ago and as at 1999, against the respective developments in the cost of living.

3. Temporal development of real wages

118. A Real Wage Rate Index had been published since December 1992, replacing the real disposable income indices provided in New Zealand's initial report on the Covenant. This index measured the combined effects of changes in negotiated wage rates, taxation and the consumer price index on the purchasing power of wages and salaries. The index was discontinued and the table of real wages set out in annex 5 to the present report is now appropriate for analysing the movement of wages from the point of view of employees.

D. Equal remuneration for work of equal value

119. The general objective of achieving an equal employment opportunities (EEO) environment that addresses the needs of those who are vulnerable or disadvantaged in the labour market is supported by anti-discrimination legislation. Much of this has been described already in paragraphs 86-96 above, however, the legislative situation can be summarized as follows. The Equal Pay Act 1972 provides that employers cannot differentiate in pay rates between employees on the basis of their sex. Under section 22 of the Human Rights Act 1993 an employer cannot discriminate in hiring or firing, training or promotion because of their employees' sex, marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status, or sexual orientation. Discrimination in terms and conditions of employment, training, promotion and dismissal because of the employees' colour, race, ethnic or national origins, sex, age, marital status, or religious or ethical belief were also grounds for taking a personal grievance under section 28 of the Employment Contracts Act 1991. Sexual harassment was prohibited in both the 1993 and 1991 Act (sects. 62 and 29 respectively).[12] Employees could make a complaint under the Human Rights Act or may use the personal grievance procedures under the Employment Contracts Act to enforce their rights in cases of discrimination or sexual harassment. Where both procedures were available, the employee could choose one or other procedure. The Employment Relations Act 2000, which replaced and repealed the Employment Contracts Act, provides protection under its personal grievance provisions against discrimination and sexual harassment. An employee may choose to take a personal grievance under the Employment Relations Act or to make a complaint under the Human Rights Act.

120. As to gender as such, it should be added, by way of clarification, that the Equal Pay Act 1972 continued to apply in conjunction with the Employment Contracts Act 1991. Accordingly, employees who believe they have been discriminated against by reason of their gender can make a complaint to the Labour Inspectorate under the Equal Pay Act 1972, or to the Human Rights Commission under the Human Rights Act 1993. They could also take a personal grievance against their employer under the Employment Contracts Act 1991. The Employment Relations Act 2000 provides protection under its personal grievance provisions against discrimination. In addition, the Equal Pay Act 1972 has been amended to ensure that equal pay provisions apply to staff working in the same workplace, whether they are on individual or collective employment contracts.

121. For most of the review period the gender pay gap has remained fairly static, at around 82 per cent. In May 1990, women's average hourly earnings were 82.1 per cent of men's. Since 1997 there has been a slight upward movement in the percentage. In May 1999 the figure was 83.9 per cent. This gap is slightly wider if total hourly earnings are considered, including overtime. In May 1999 women earned 83.6 per cent of men's average total weekly earnings.

122. Occupation segregation decreased in New Zealand over the 15-year period from 1981-1996. Recent research using employment data from the last four population censuses have identified substantial reductions in aggregate occupational segregation, as measured using the standard international indexes of occupational segregation (NZIER, 1998, p. 18). There were reductions in all inter-censual periods.

123. The reduction in occupational segregation may have helped to reduce the gender earnings gap in New Zealand over the past 15 years, although the precise impact of reduced occupational segregation on the male-female earnings differential is not currently well understood. Women remain disproportionately represented in less senior and lower-paying positions within occupations. Women employed full-time continue to have lower average earnings than full-time employed men in all major occupational groups.

124. Both overseas and New Zealand studies suggest that a number of factors contribute to the disparity in women's and men's earnings. These factors include:

(a) Female employees continue to have lower levels of qualifications than male employees, despite substantial reductions in the gender gap in qualifications in recent years;

(b) Women tend to have more frequent and longer periods outside the labour force, and consequently have less accumulated work experience or seniority than men on average;

(c) Women work for fewer hours per week than men on average;

(d) Women are disproportionately represented in less senior and lower-paying positions within occupations.

125. Improvements in the gender earnings gap have come from:

(a) Increases in the mean educational qualifications of women relative to those of men;

(b) Increases in the participation rates and cumulative work experience of women, leading to reductions in the work experience gap between women and men;

(c) Reductions in the relative earnings of some manual, traditionally male occupations;

(d) The movement of women into higher paying positions within occupations.

126. The statistics suggest that the Equal Pay Act 1972 has had less success in redressing less obvious forms of gender discrimination in pay, particularly pay discrimination in predominantly female occupations. In response to concern about the persistence of the gender pay gap, the Employment Equity Act was passed in 1990. The Act established an Employment Equity Commission, required that firms over a certain size provide EEO plans, and provided a process for lodging pay equity claims.

127. However, following the general election in 1990 the Employment Equity Act 1990 was repealed. The Government considered that the EEO principle and the promotion of women and other groups disadvantaged in employment was best achieved by the voluntary promotion of progressive EEO policies and practices rather than by prescriptive legislation. To facilitate this a two-pronged approach has been adopted. First, a joint private-public sector-funded Equal Employment Opportunities Trust was established in 1991 for the development, promotion and research into EEO policies and practices in the private sector. The main aim of the trust is to promote EEO as good management practice. The Government contributed $445,000 to the EEO Trust in the financial year ending 30 June 1997. This contribution was increased from $95,000 in the financial year ending 30 June 1996 following the review of the EEO Trust completed in 1995. An announcement was made on 12 May 1998 that there would be an increase in the funding ratio of the Trust, on the basis of a change to a $2:$1 government private sector subsidy, up to the maximum government contribution of $445,000. Funding was previously made on the basis of a $1:$1 government private sector subsidy, up to that maximum.

128. Secondly, the Government has established an Equal Employment Opportunities Contestable Fund for the promotion of EEO programmes and practices in private sector workplaces. Some projects funded by the Fund which develop EEO resources will be available for wider distribution to employers and interest groups via the EEO Trust. A number of initiatives have also been taken to encourage family-friendly work practices in the public and private sectors. Fifty-one projects totalling $2,019,892 had been allocated funding since the inception of the Fund. There has been a mix of project outcomes, including: resources such as videos, journal articles, booklets and kits; research projects; educational seminars; and workplace change projects aimed at implementing EEO programmes in companies. A review of the effectiveness and demand for the EEO Trust and EEO Fund was completed in 1997. The overall

conclusion of the review was that the Trust and the Fund are effective and that there is demand for their services. Furthermore, it was concluded that they contribute to the Government's objectives in the labour market.

129. As to these and other questions involving equality of remuneration for workers, reference should be made to the New Zealand reports on the ILO Equal Remuneration Convention, 1951 (No. 100) for the periods 1 July 1989-30 June 1991, 1 July 1991-30 June 1993 and 1 July 1993-30 June 1996. In regard to the equal remuneration of women reference should be made to "Characteristics of the employed" published in the Labour Market Statistics 1998 (attached as annex 6).

E. Measures to promote an objective appraisal of jobs

130. In 1991 the Government published (via the State Services Commission) a substantial manual on gender-neutral job evaluation entitled Equity at Work - An Approach to Gender-Neutral Job Evaluation. The preparation and content of this manual are fully described in New Zealand's report on the ILO Equal Remuneration Convention, 1951 (No. 100) for 1 July 1991-30 June 1993 (pp. 5, 6). The New Zealand Report on the same Convention for the period 1 July 1993-30 June 1996 then gave the following further comments.

> "In 1995, a survey was conducted of New Zealand's major commercial firms offering job evaluation systems - respondents' individual replies were required to be kept confidential. All respondents noted that the systems they operate are designed to eliminate bias in all areas where this is possible, and that Equity at Work is well known and is considered to be a valuable contribution to the overall discussion of job evaluation techniques. As noted above, various Government and Government-sponsored bodies are involved in the promotion of equal employment opportunities programmes and attitudes amongst employers. This work complements the promotion of gender neutral jobs evaluation by focusing employers' thoughts on the work to be performed, rather than a specific person or type of person."

F. Equal opportunity for promotion

131. The main legal foundation for the principle of equal opportunity for promotion was provided in New Zealand by comparable sections in the Human Rights Act 1993 and the Employment Contracts Act 1991.[13] The latter of these enactments applied to the public as well as the private sector. The discrimination provisions of the former Act applied to the private sector; their bearing on activities in the public sector is described in paragraph 77 above. Section 22 of the Human Rights Act 1993 and section 28 of the Employment Contracts Act 1991 explicitly declare that an employee may not, in relation to opportunities for promotion, be discriminated against by reason of factors such as colour, race, sex or marital status, as compared with other employees of the same or substantially similar qualifications, experience or skills employed in the same or substantially similar circumstances. As indicated under article 6 (paras. 91-93 above), discrimination on such a basis can, on the part of an aggrieved employee, be taken either by way of complaint to the Human Rights Commission, or by personal grievance claim to the Employment Tribunal. It would appear that the invocation of either Act in relation to non-promotion (through discrimination) in employment is infrequent. During the review

period the effective use of statutory provisions against such non-promotion was, however, exemplified by the case of Trilford v. Car Haulaways Ltd. which was heard in the Employment Tribunal in 1995 (8 November 1995, CT 157/95) and then on appeal to the Employment Court sitting as a full Court in 1996 ([1996] 2 ERNZ 351).[14] In this case a female employee had not been considered for a transport supervisor position. She alleged that she had been sexually discriminated against and unjustifiably disadvantaged in her employment. The full Court unanimously held (page 353 per Goddard CJ, page 354 per Finigan J, page 385 per Palmer J) that in determining whether an employee has been discriminated against it must examine that employer's state of mind and motivation. It must also look for proof of causal connection between the dismissal and the alleged prejudice in the sense that the prejudice in issue must be shown to have been the reason which actuated the dismissal.

132. As to the degree of actual realization of the principle, and as to which groups of workers are currently deprived of equal opportunity for promotion, specific data are not available. The statistics already provided, among the annexes to this report, concerning numbers, ages, sexes and ethnic groups at particular salary levels in occupations obviously lend themselves to a variety of interpretations, and confident conclusions bearing on the fulfilment or non-fulfilment of proper opportunities for promotion can hardly be drawn. Clearly, however, for whatever cause, much ground remains to be made up by various groups, as shown by the following recent analysis of representation in the top three tiers of management in the private sector:

Percentage of the total top three tiers of management in respondent organizations (percentage of NZ population in brackets)

Women	Maori	Pacific Island peoples	Asian	Other ethnic groups	People with a disability
24.6% (50.9%)	2.8% (14.5%)	0.7% (5.6%)	1.2% (5%)	1.4% (3%)	0.8% (22%)

The above data are reproduced from EEO Trust Index Summary November 1998 issued by the Equal Employment Opportunities Trust referred to in paragraph 127 above and based on an EEO survey sent to 1,784 organizations, mostly of 50-plus employees.

133. As to the public sector, comparable information is available about the results of the EEO (including for promotion) policies undertaken by government departments pursuant to the obligation imposed on chief executives, by the State Sector Act 1988, to be "good employers". The following is a relevant extract from the New Zealand report on ILO Equal Remuneration Convention, 1951 (No. 100) for 1 July 1993-30 June 1996:

> "... while there is still room for improvement, women have realized the most and significant gains of all EEO groups in the public sector. The proportional representation of women in the $60,000+ salary group in 1994 was more than double that of 1991 (an increase from 9 per cent to 21 per cent of all staff in this group). More recent data from the State Services Commission show that the percentage of women who are in the $60,000+ group continues to steadily increase, in both absolute and relative terms."

The following table was also taken from that report:

Gender distribution of public service staff earning over $60,000, 1991-1995

Gender	1991	1992	1993 (No.)	1994 (No.)	1995 (No.)
Female	9%	17%	20% (315)	21% (367)	22% (427)
Male	90%	83%	80% (1 281)	79% (1 362)	78% (1 483)

and can now be updated as follows:

Gender	1995 (No.)	1996 (No.)	1997 (No.)
Female	22% (432)	25% (566)	28% (725)
Male	78% (1 497)	75% (1 717)	72% (1 897)

134. As to the action being taken with a view to eliminating inequality in relation to promotion, a number of steps have been taken to expand the work of the EEO programmes outlined in New Zealand's initial report under the Covenant. As already mentioned (para. 127 above), the Equal Employment Opportunities Trust, a joint venture between the public- and private-sector employers, was established in December 1991 with the role of promoting EEO as good management practice in the private sector. Trust activities include EEO promotion and employer education and the development and dissemination of EEO resources to employers. The EEO Contestable Fund (mentioned in para. 128 above) is also available to support projects which promote EEO.

135. Other initiatives are the Education and Training Support Agency, which advances a range of training options for employers, Industry Training Organizations, training providers and trainees; Te Puni Kokiri (the Ministry of Maori Development), which ensures that Maori participate equally and fully in both public and private sectors by ensuring better access to resources; the Ministry of Pacific Island Affairs, which establishes and maintains liaison with and between Pacific Island communities in New Zealand and government agencies; the Ministry of Women's Affairs, which assists the Government in improving the status of women; the State Services Commission's EEO team, which is responsible for monitoring EEO policies and programmes undertaken by government departments; the Ministry of Youth Affairs, which aims to ensure that the concerns of young New Zealanders (aged 12-25) are heard by policy makers, services and legislation; the Senior Citizens Unit, which provides the Minister for Senior Citizens with advice on policy issues affecting older people; and finally, the Workbridge organization, which is a specialist employment and training placement service for people with disabilities.[15]

G. Income distribution of employees - public and private sectors

136. Summary information is available about the income distribution of employees, both in the public and the private sector, during the period under review, based upon the 1996 Census of Population.[16] The various entries under "Annual income group" are relevant. The trends in income distribution displayed by the same census as compared with the 1991 census are analysed in Census 96 - Incomes, published in 1998 by Statistics New Zealand (pp. 13-18) (provided in the supplementary materials). Exact data are not available on the remuneration

of comparable jobs in the public and private sectors. The 1996 census statistics do, however, afford data on comparative numbers of employees and their incomes across various industries/occupations.[17]

137. The same 1996 census statistics also provide detailed statistics as to salary levels of Maori and Pacific Island peoples compared with other ethnic groups (pp. 39-58).[18]

H. Occupational health and safety

138. It should be noted that to supplement the following summary, more detailed information under this heading may be obtained from New Zealand's reports in regard to the ILO Labour Inspection Convention 1,947 (No. 81).[19]

1. Health and Safety in Employment Act 1992

139. In the first part of the period under review, legislative reform in the area of occupational health and safety occurred with the introduction of a single act prescribing minimum standards across all industries. The new Health and Safety in Employment (HSE) Act 1992 came into force from 1 April 1993 and sets out the responsibilities of employers, employees and others to manage the risks they face in their work on a day-to-day basis. The Act places a general duty upon employers to take all practicable steps to ensure the safety of employers at work. Furthermore, the Act provides for detailed guidance material to be created to assist those with responsibilities to meet the Act's requirements and allows for regulations to be made for specific industries, processes or hazards (which it is mandatory to comply with). Regulations which have been enacted under the Act are: the Health and Safety in Employment (Prescribed Matters) Regulations 1993, the Health and Safety in Employment Regulations 1995, and the Pressure Equipment, Cranes, and Passenger Ropeways Regulations 1999. The Act also allows for approved codes of practice to be made, after consultation with industry (which are not mandatory, but are statements of preferred or best practice).

140. The principal objects of the legislation are the prevention of harm to employees and the promotion of excellence in health and safety management. The Act establishes a broad framework outlining employer responsibility for the management of risks in the workplace, based on a set of incentives and sanctions. To support the general provisions of the Act, regulations set minimum standards of workplace safety in high risk areas.

141. Under the Act, employers have the primary responsibility to:

(a) Provide a safe and healthy working environment for their employees;

(b) Identify all hazards (potential or actual causes/sources of harm);

(c) Determine which hazards are significant;

(d) Eliminate, isolate or minimize significant hazards;

(e) Where the significant hazard can only be minimized protective clothing must be provided and used and the hazard (and its effects) must be monitored;

(f) Provide information on hazards and the results of monitoring to employees;

(g) Provide training and supervision of employees and give employees the opportunity to be involved in developing procedures for the management of hazards.

142. The Act also requires other people who have an ability to prevent harm to people at work to take all practicable steps to do so. This includes other employees, principals under contracts, owners of buildings, plant and equipment used at work, and self-employed people.

143. Incentives for employers to adequately manage risks in the workplace include improved profitability from reduction in injury and non-injury accidents and possible reduction in accident compensation employer premiums.

144. The administration and enforcement of the Health and Safety in Employment Act is undertaken by the Occupational Safety and Health Service (OSH) of the Department of Labour, which has extensive direct involvement with the industry. Recent information on the activities of this Service is available in the New Zealand Official Yearbook 1998 (attached among the supplementary materials).

145. Enforcement mechanisms in the Act include:

(a) The appointment of inspectors who have powers of entry into, and inspection of, any place of work. Inspectors also have the power to take samples of any material or substance from the place of work;

(b) The appointment of departmental medical practitioners who can suspend people from specific work activities.

146. The following further description of the enforcement provisions of the Act was given in the New Zealand response to a relevant question from the Committee in relation to New Zealand's initial report on the Covenant:

> "The Act requires inspectors to ensure compliance by ascertaining whether or not the Act is being complied with and taking all reasonable steps to ensure compliance. Reasonable steps range from advice to prosecution. For example, the Act provides for inspectors to give information and education on safety management to employers, employees and other persons. Inspectors can issue improvement and prohibition notices or, if necessary, prosecute offenders. Penalties which can be imposed by the courts include fines of up to $100,000 and one year's imprisonment. The Act requires employers to report all accidents resulting in serious harm which may then be investigated by inspectors."

147. There has been concern that the incidence of occupational diseases is under-reported by employers. To try to counteract this under-reporting, a Notifiable Occupational Diseases system has been set up. This system is a voluntary one for general practitioners to notify the Department of Labour of diseases that have a suspected occupational cause. Once a notification is received by OSH the workplace and the individual concerned are investigated. Some of the common occupational related diseases are: asbestos related diseases, occupational asthma, occupational cancer, occupational noise-induced hearing loss, occupational skin disease. However, there is still concern in regard to the very low reporting rate, as has been shown in relation to mesothelioma cancers.[20]

148. As to the scale of activities under the Act, it may be noted that in 1998/99, the Department of Labour visited 13,880 workplaces to assess compliance with the Health and Safety in Employment Act; 90 per cent of these places of work were within one of the national initiative areas (industry sectors that have been identified as high risk):

(a) Agriculture;

(b) Forestry and logging;

(c) Construction;

(d) Health encompassing manual handling, boat building, meat processing, welding and homecare;

(e) Mining, quarrying, tunnelling and petroleum extraction;

(f) Workplaces using hazardous substances; and

(g) Small businesses.

149. In addition, the Department carried out 9,624 investigations of accidents, incidents, complaints and notifiable occupational diseases. It published the following statistics for the period 1 April 1993 to 31 December 2000 in regard to prosecutions under the Health and Safety in Employment Act 1992:

HSE Act prosecutions lodged

Body Corporate	1
Employee	121
Employer	1 665
Person in control	153
Principal	140
Self-employed	36
Total:	2 116

HSE Act cases concluded

Convicted	1 363
Dismissed	134
Withdrawn	549
Yet to be made	70
Total cases:	2 116
Total fines:	$5 620 005

HSE Act reason for prosecution

Following accident	1 652
Following complaint	107
Following incident	59
Following inspection	298
Total:	2 116

2. Workers not covered by the Health and Safety in Employment Act 1992

150. The Health and Safety in Employment Act 1992 has much broader coverage than previous legislation. Previously, only work specifically included in legislation was covered, but now only work specifically excluded from the Act is not covered. About 99 per cent of the paid workforce is covered by the Act. The crews of ships and aircraft are not covered by the Act, but ships' crews are covered to the same standards through maritime legislation. Civil aviation legislation is primarily concerned with the safety of the aircraft but this does have a direct effect on crew safety; both major carriers during the reporting period (Air New Zealand and Ansett) have adopted the principles of the Health and Safety in Employment Act and more than meet its requirements. Rail and electric line workers are not covered either.

3. Statistical data: work-related deaths and occupational accidents

151. Under the Health and Safety in Employment Act it is mandatory to report fatal work-related accidents to the Department of Labour. The table in annex 7 contains data on fatal non-transport work-related accidents during the period 1989-1999, collated from reports of fatal accidents made to the Department of Labour.

4. Role of the Accident Compensation Corporation (ACC)

152. The Accident Compensation Corporation is still in operation, but under new legislation - the Accident Insurance Act 1998. This Act requires the ACC to undertake or fund safety programmes which are cost effective and which are likely to result in a reduction of scheme costs and premium rates for those groups that it insures.

153. While the Accident Insurance Act 1998 has now removed ACC involvement in work injuries, except for the self-employed, it does permit the Corporation to create subsidiaries that can sell services to all insurers in the accident insurance market. Prism (injury prevention and

risk management) is an ACC subsidiary that will continue to provide quality injury prevention services to ACC, self-insuring employers, insurers, the self-employed insured with ACC and local or government authorities in respect of non-work injuries. Prism offers:

(a) A Worksmart Consultancy Service that provides expert advisory services in relation to injury prevention and risk management;

(b) Workplace health and safety audits;

(c) Assistance in establishing management systems to track injuries;

(d) Customized education, training and advice;

(e) Developing, implementing and evaluating national injury prevention programmes.

(f) In relation to non-work injuries ACC will use Prism to conduct campaigns on specific hazards, produce injury prevention publications for the community, and administer national injury prevention programmes that include reducing the number of lower back injuries, rugby league injuries and injuries to children.

154. Further information concerning the role and activities of the ACC is given under articles 9 and 12 below.

I. Rest, leisure, limitation of working hours, and holidays with pay

155. The situation under this heading has been somewhat changed from the position reported in New Zealand's initial report on the Covenant (paras. 165 ff). With the passage of the Employment Contracts Act 1991, the Labour Relations Act 1987 was repealed. As noted already, terms and conditions of employment were matters for negotiation between employers and employees within the framework of the former Act. Parties continued, however, to be required to comply with statutory minimum requirements, which included a stipulated number of paid public holidays where the holiday would otherwise be a working day, and three weeks' paid annual leave after 12 months' employment, and five days' special leave after six months' employment.[21] For more detail, the provision in New Zealand of paid annual holidays, public holidays and special leave through the Holidays Act 1981 is outlined in New Zealand's reports on the ILO Holidays with Pay Convention, 1936 (No. 52) and ILO Holidays with Pay (Agriculture) Convention, 1936 (No. 101). During the period under review, the Holidays Act 1981 was amended by the Holidays Amendment Act 1991 in order to make the appropriate references to the Employment Contracts Act 1991 and contracts thereunder.

156. The provision of weekly rest and reasonable limitations on working hours is discussed in the New Zealand reports on the ILO Weekly Rest (Industry) Convention, 1921 (No. 14). Briefly, section 172 of the Labour Relations Act 1987 (referred to in New Zealand's initial report on the Covenant (para. 167)) remained in force up to 15 May 1991 when it was replaced by section 10 of the Minimum Wage Amendment Act 1991. The latter section is to essentially similar effect (but in the context of the Employment Contracts Act 1991) and the two sections reflect both approval of the principle of a weekly period of rest and the ability of workers and

employers to negotiate arrangements of working hours which suit their particular circumstances.[22] As indicated in New Zealand's reports on ILO conventions, the standard working week has, during the period under review, continued to be a 40-hour, 5-day week (which generally runs from Monday to Friday), with different arrangements being negotiated by some employees and employers.

157. As to shop trading hours, it should be noted that the Shop Trading Hours Act Repeal Act 1990 came into effect on 1 August 1990, repealing the Shop Trading Hours Act 1977 referred to in New Zealand's initial report (para. 173). The Repeal Act removed the previous restrictions on trading on Sundays, public holidays and between 9 p.m. and 7 a.m. The only restrictions which remain are on Christmas Day, Good Friday, Easter Sunday, and before 1 p.m. on Anzac Day.[23]

158. The actual working hours of any business are to be determined by negotiation between employees and employers. There were, however, a number of transitional protective provisions for employees set out in the Repeal Act that were deemed to be part of awards and agreements current at 1 August 1990. The effect of the passage of the Employment Contracts Act in 1991 was that these transitional provisions were effective until such time as the applicable award or agreement was replaced through the negotiation of an employment contract.

Article 8 - Trade union rights

A. Summary of key developments

159. This section of the report centres on the following key developments:

(a) Passage of the Employment Contracts Act 1991 which reformed the industrial relations structures within which unions operate;

(b) The introduction of the Employment Relations Act 2000, which repealed and replaced the Employment Contracts Act 1991, again fundamentally altered the industrial relations regime.

B. Previous reporting

160. The substance of article 8 is covered briefly in New Zealand's third and fourth periodic reports on the International Covenant on Civil and Political Rights (for the periods 1988-1993 (paras. 111-121) and 1994-1996 (paras. 159-163), respectively) under the commentaries regarding article 22 of that Covenant. A very detailed coverage is available in New Zealand's report on the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) for the period 1 January 1993-1 April 1998, and on the ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98). The reports include information on recent relevant judicial decisions. The following further comments provide a summary and an updating.

C. Right to form and join trade unions, right of trade unions to federate

161. As outlined under articles 6 and 7 above, the passage of the Employment Contracts Act 199 reformed the labour market in New Zealand during the reporting period. One of the erstwhile Government's principal objectives in introducing the Employment Contracts Act was to give employees the freedom to choose whether or not to belong to an employees' organization and, if so, to which organization. The Employment Relations Act 2000 continues to protect employees' freedom of association; however, it provides that registered unions have the sole right to participate in collective bargaining on behalf of their members.

162. The Trade Unions Act 1908 continues to provide a wide definition of trade unions, which includes workers, employers and trade organizations. The purposes of these organizations cannot be deemed unlawful merely because they are in restraint of trade, so protecting members from prosecution. Unions can choose whether to register under the Act, although its statutory protections apply whether or not they are registered.

163. The Commerce Act 1986 also provides a general caveat as to trade union activity by exempting contracts and arrangements about terms and conditions of employment from its provisions prohibiting anti-competitive practices, thereby protecting the right to bargain collectively. The New Zealand Bill of Rights Act 1990 provides a general right to freedom of association in section 17.[24]

164. Under the Employment Contracts Act 1991, all employees had the right to join and form unions. No substantive or formal conditions relating to joining or forming unions were imposed by statute. No restrictions were placed on the ability of unions to establish national organizations or to join international organizations. The Employment Relations Act 2000 provides all employees with the right to join and form unions. Unions must be registered under the Act in order to participate in and be a party to collective bargaining and have rights of access to workplaces. Registration requires that a union be an incorporated society that is accountable to its members, has an object of promoting its members' collective employment interests and has rules that are democratic and not unreasonable, discriminatory, prejudicial or contrary to law. Unions must also be independent of, and operate at arm's length from, any employer.

165. Employees had the right to decide whether they will belong to employees' organizations, including unions. This right is protected by prohibitions on the use of undue influence or of preference in employment in relation to an employee's membership or non-membership of a union or other employee organization. Other provisions which support the right of employees to participate in unions included the rights of workplace access given to employees' authorized representatives in order to discuss matters relating to employment contract negotiations (see also para. 77 above). In Air NZ Ltd. v. Kippenberger ([1999] 1 ERNZ 390, 398 (HC) Randerson J) the court considered that the provision of Part I of the Employment Contracts Act 1991 had to be construed consistently with both section 5 of the Employment Contracts Act 1991 and section 17 of the New Zealand Bill of Rights Act 1990. The judge went on to say:

> "It is generally understood that the right to freedom of association also includes the right not to associate with others, except to the extent proscribed by law. Indeed, s 5 of the ECA refers expressly to the freedom to choose 'whether or not' to associate with other employees for the purpose of advancing their collective employment interests."

166. The Employment Relations Act 2000 provides for freedom of association, voluntary membership of a union, a prohibition on undue influence and preference in employment in relation to membership or non-membership of a union. Unions have enhanced rights of access to workplaces under the Act for purposes related to the employment of its members and/or to the unions' business.

167. Employees also had the right to choose their representative for the purposes of negotiations or other matters to do with their employment contract (see para. 77 above). Representatives had the recognized right to become parties to employment contracts with the agreement of the employees and employers concerned. If a contract was procured by harsh and oppressive behaviour or by undue influence, or if the contract or any part of it is harsh and oppressive, it could be set aside in part or in whole by the Employment Court according to section 104 of the Employment Contracts Act 1991. Employers also had to recognize the representative authorized by employees. Under the Employment Relations Act a union must be a party to a collective employment agreement. The Act is built on the principles of good-faith behaviour and collective bargaining must be conducted in good faith. Employees may enter into individual employment agreements with their employer and are protected against unfair bargaining. Protection against unfair bargaining replaced the previous harsh and oppressive protections of the Employment Contracts Act. Remedies for unfair bargaining include an order by the Employment Relations Authority for compensation, or, where the problem cannot be resolved in good faith between the parties with mediation assistance, an order cancelling or verifying the agreement. Any person may represent an employee who is exercising a right conferred by the Employment Relations Act or other employment legislation to do anything or take any action in respect of an employer or in the employment institutions.

D. Employment contracts and collective bargaining

168. The objective of the Employment Contracts Act 1991 was to give employers and employees the right to negotiate whether their employment contract will be individual, collective, or both. Either type of contract could be enforced through the Employment Tribunal. Part II of the Act, which deals with bargaining, explicitly recognized collective bargaining and made several provisions for collective contracts which were different from those for individual contracts (for example, in regard to the expiry of collective employment contracts, the variation of collective employment contracts, and in regard to new employees). However, many (especially the Council of Trade Unions) voiced some doubt whether in actual fact the Employment Contracts Act 1991 achieved its objective. The Employment Relations Act promotes collective bargaining and acknowledges and addresses the inherent inequality of bargaining power in employment relationships. A union must be a party to a collective agreement and the duty of good faith applies generally and specifically in relation to collective bargaining. Employees are protected against unfair bargaining for an individual employment

agreement. Both collective and individual agreements can be enforced under the Act's institutions, which include the Mediation Service and investigative Employment Relations Authority.

E. Number and structure of trade unions and their membership

169. Consistently with worldwide trends, union membership in New Zealand had been declining for a number of years before the enactment of the Employment Contracts Act 1991. The removal of the compulsory union membership provisions previously stipulated in the Labour Relations Act 1987 also led to a drop in membership. The following table shows that the rate of decline was most significant in the year following the 1991 Act's introduction. This trend has continued but at a lower rate.

	Unions	Membership	Density (%)
Dec. 1985	259	683 006	43.5
Sept. 1989	112	648 825	44.7
May 1991	80	603 118	41.5
Dec. 1991	66	514 325	35.4
Dec. 1992	58	428 160	28.8
Dec. 1993	67	409 112	26.8
Dec. 1994	82	375 906	23.4
Dec. 1995	82	362 200	21.7
Dec. 1996	83	339 327	19.9[25]

Density, referred to above, is total union membership as a percentage of the total employed workforce reported by the Household Labour Force Survey 1998. A total of 144 unions have been registered under the Employment Relations Act since 2 October 2000. Union membership as of July 2001 is approximately 320,000.

170. The comparison of union numbers and size between May 1991 and December 1996 shows two differing trends. First, the number of small unions (with fewer than 1,000 members) has grown from 4 (with 2,954 members) in 1991 to 41 (with 11,861 members) in 1997, since the repeal of the Labour Relations Act 1987 and revocation of the "1,000 members" requirement to maintain union registration. Secondly, the proportion of union members in large unions (with more than 10,000 members) has remained fairly constant (20 unions with 436,800 members in 1991, 9 unions with 241,746 members in 1997).

F. The right to strike

171. The Employment Contracts Act 1991 gave employees[26] the right to strike and employers to lock out, in relation to negotiations for a collective employment contract (provided that no collective contract relating to the employees in question is in force) and on health and safety grounds.

172. Strikes and lockouts concerned with the issue of whether a collective contract would bind more than one employer were unlawful. This provision (which was intended to protect the freedom of employers not to associate with other employers in collective bargaining) is

discussed in greater detail below. The Employment Relations Act retains the right to strike and lock out; however, it extended the right to strike so that strikes are lawful in pursuit of multiparty agreements. Strikes and lockouts relating to bargaining for a collective agreement are subject to a 40-day strike-free period to encourage collective bargaining in good faith.

173. Other than the notice requirements applying to certain industries listed as essential industries, there are no special legal provisions concerning the right to strike by particular categories of employees.

G. Restrictions

174. Consistently with the previous position indicated in New Zealand's initial report on the present Covenant (para. 208), full freedom of association within the terms of article 8, paragraph 1, is not available to the armed forces and the New Zealand police. As shown in New Zealand's report on the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) for the period 1 January 1993-1 April 1998 (p. 16), the armed forces are thus not subject to the rights and obligations set out in the Employment Contracts Act 1991.[27] Under the Defence Act 1990, the Chief of the Defence Force has a statutory responsibility to determine conditions of service of the armed forces, in consultation with the State Services Commission. The Defence Act 1990 contains no prohibition of the establishment of a trade union (or equivalent) by members of the armed forces, but none yet exists. While strikes, as such, are not expressly referred to in legislation concerning the armed forces, action such as refusing to comply with lawful commands would contravene the provisions of the Armed Forces Discipline Act 1971. The armed forces are not subject to the Employment Relations Act 2000.

175. As also shown in New Zealand's report on the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) for the period 1 January 1993-1 April 1998 (page 16), the police are covered only to a certain extent by the Employment Contracts Act 1991,[28] with certain separate arrangements that apply to sworn police officers under the Police Act 1958. Bargaining rights are given to the police service organizations (the Police Association and the Police Managers Guild) as representative organizations of the police. Senior staff may be employed on individual employment contracts. There are some restrictions on what may be negotiated as of right, and the police have no right to strike but have a right to "final offer" arbitration under the Act. The Police are covered by the Employment Relations Act to the extent that they were by the Employment Contracts Act.

H. Question of New Zealand's ratifying two further ILO Conventions relevant to article 8, and removing a reservation to that article

176. In paragraphs 20 and 22 of its concluding observations on New Zealand's initial report, the Committee expressed the hope that New Zealand would consider the possibility of ratifying the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98). It also hoped that New Zealand would remove its reservations to the Covenant, which include a reservation concerning article 8. In response, the following comments are now given.

177. During the reporting period the New Zealand Government maintained a policy of regularly considering the ratification of ILO conventions. At the same time, the Government's long-standing policy and practice - applying to all international treaties - is that it will only ratify such conventions, and thereby incur legal obligations thereunder, when it can fully comply with them.

178. The Committee will be aware that in early 1993 a complaint that the Employment Contracts Act 1991 contravened Conventions Nos. 87 and 98 was made to the ILO Committee on Freedom of Association by the New Zealand Council of Trade Unions (NZCTU). In this context, the New Zealand Government undertook a very thorough examination of the provisions of the Employment Contracts Act 1991, other employment legislation, court decisions, and available information about bargaining outcomes. In its response to the ILO Committee, the Government concluded that the Employment Contracts Act and related legislation upheld the principles of freedom of association and free collective bargaining.

179. In November 1994 the ILO Committee issued its final report on the complaint, following the visit by a fact-finding direct contacts mission in September 1994. The ILO Committee concluded in substance that workers and their organizations should be able to call for industrial action in respect of multi-employer collective employment contracts, which is made expressly illegal under section 63 (e) of the 1991 Act;[29] and expressed concern that the Act might not meet the Committee's established principles on collective bargaining. In particular, it asked to be kept informed on the relevant case law. The communication in regard to the complaint and the findings of the Committee are attached among the supplementary materials.

180. The foregoing indicates that there were some questions remaining in the reporting period about New Zealand's ability to ratify ILO Conventions Nos. 87 and 98. The prohibition on multi-employer strikes remained a barrier to their ratification. Judicial case law about bargaining processes and freedom of association continued to develop under the Employment Contracts Act during the reporting period. A series of decisions has been released by the New Zealand Court of Appeal and the Employment Court confirming the fundamental principle that the recognition of the authorized representative means that the employer must negotiate with the representative and not the employees. A number of significant cases have considered the definition of the boundary between communications with employees which amount to negotiation, on the one hand, and those which are permitted as being factual, or not part of the persuasive tactics of negotiation, on the other (Capital Coast Health Ltd. v. NZ Medical Laboratory Workers Union Inc. ([1996] 1 NZLR 7 (CA)) and NZ Fire Service Commission v. Ivamy ([1996] 1 ERNZ 85 (CA)).[30]

181. As already described under the present article, the Employment Contracts Act 1991 provided for freedom of association and collective bargaining, including freedom for employees and employers to choose their representation. On occasion, in this environment of free negotiation, parties disagreed about whether they wish to negotiate individually or collectively. Nevertheless, the Act provided protection of the right to freely negotiate, without interference.

182. As indicated above, the restriction on the right to strike over the question of whether an employment contract would cover more than one employer remains an issue. The provision is intended to protect the right of the employer as well as that of employees to choose the coverage

of employment contracts. The Government is concerned with the effects on the community of industrial action in which employers have no individual control over the outcomes. The provision, therefore, balances the employees' right to strike with employers' right not to face strike action and economic loss due to the actions of other employers over whom they have no control, and not to be bound into arrangements with other employers whose business arrangements may be incompatible. Employees can strike over the content of multi-employer collective employment contracts, if the structure is agreed to. Given these areas of doubt, the erstwhile Government did not propose to ratify the conventions in question during the reporting period.

183. The same issues affect the Government's position concerning New Zealand's reservation in relation to article 8. The reservation states that:

> "the Government of New Zealand reserves the right not to apply article 8 to the extent that existing legislative measures, enacted to ensure effective trade union representation and encourage orderly industrial relations, may not be fully compatible with that article."

Under the Employment Contracts Act 1991, the previously restrictive measures relating to trade union registration and exclusive coverage of particular groups of workers were replaced by the provisions for freedom of association described above in paragraphs 161 ff. The Act also provided for the right to strike as described above in paragraphs 171 ff. However, the restrictions applied to that right, including the prohibition on strikes in support of multi-employer contracts, are intended to encourage orderly industrial relations. During the reporting period, the Government did not therefore propose to withdraw this reservation. The Employment Relations Act has an objective of promoting observance in New Zealand of the principles underlying ILO Conventions Nos. 87 and 98. Under the Employment Relations Act, strikes are lawful in pursuit of multiparty agreements. The Employment Relations Act promotes collective bargaining, registration of unions and good-faith behaviour in all aspects of the employment environment.

184. In its concluding observations, the Committee also recommended that the Government give consideration to a careful review of the impact of the Employment Contracts Act 1991 and related legislation on the provisions set out in articles 6, 7, and 8 of the Covenant, and to the elimination of any conflicts identified by such a review (para. 19). In response to this recommendation, the Committee can be assured that New Zealand Governments continually monitor the effects of the Act and related labour legislation through a wide range of methods. Surveys and statistical data, including information on growth trends, act as a primary source of information, as do case law and employment contract developments. Much of this is reflected in the present report. The Government remains committed to assessing the impacts of employment legislations in its monitoring and evaluation of the Employment Relations Act 2000, and is currently developing a detailed monitoring and evaluation strategy.

Article 9 - The right to social security

A. Summary of key developments

185. This section of the report centres on the following key development:

- Reform of the social welfare system in order to target assistance more tightly to vulnerable groups, and to contain costs.

B. General

186. Throughout the reporting period New Zealand has remained committed to the provision of a comprehensive social security system for all its people. For the economic reasons set out quite fully in New Zealand's introductory statement regarding the initial report, there have, however, been significant developments to take into account systematic needs for rationalization, cost containment, better-targeted assistance for the families of low income wage earners, and a more positively focused thrust to deal with unemployment. Three key issues underlying this approach have been the growth of costs to social security, increasing visible anomalies within and between benefit systems and problems of benefit and labour force interaction. The change in policy has meant that some of the proposals in New Zealand's initial report did not proceed or were modified and that some cuts in benefit rates early in the reporting period were necessary. It should be borne in mind that cost containment has only been one factor at issue; policies have also been aimed at, for example, increasing people's participation in the work force.

187. Principal legislative measures (such as the Social Security Act 1964) indicated in New Zealand's initial report have been amended in various ways during the period under review. One measure - the Accident Compensation Act 1982 - has been revised and replaced by the Accident Rehabilitation and Compensation Insurance Act 1992 and later the Accident Insurance Act 1998. New Zealand still retains a comprehensive accident compensation scheme, based on insurance principles, which meets the costs of treatment and rehabilitation of accidents and injuries. Private insurers administer work injuries. ACC administers non-work injuries. An exception exists for the self-employed who can choose either ACC or a private insurer to cover them for work and non-work injuries. With the passage of the 1992 Act there have been a distinct set of social rehabilitation entitlements developed. The provision of these has gradually moved from a prescriptive to a discretionary basis in recent years and full discretion is incorporated in the Accident Insurance Act 1998. The basic medical benefits of the scheme are outlined in article 12. Accident prevention measures pursued under the Act have been described under article 7 (paras. 152 ff).

188. It should be noted that in 1998 a major change of direction in regard to treating the problem of unemployment was taken with the passage of the Social Security Amendment Act 1998. This measure was designed to achieve the erstwhile Government's primary employment policy objectives of reducing the length of time that people are unemployed, and of keeping job seekers active. One principal effect of the legislation was to replace - from 1 October 1998 - the previous unemployment benefit (and a number of other unemployment-related benefits) by a new Community Wage. The basis of this wage was that

unemployed job seekers must to their best ability seek suitable work and also be available for community work, training, or other organized activity designed to enable and to encourage their move into paid employment.

189. The Community Wage scheme is a complex one which was, at the end of the reporting period in mid-1999, in the early stages of its implementation. It is, therefore, best assessed by consideration of the original explanatory information provided in and with the Government's relevant media release of 22 April 1998.[31]

190. Some structural changes involved the Departments of Labour and of Social Welfare, consistent with the aims of the Community Wage legislation referred to above. Sectors of these two departments (the NZ Employment Service, Income Support, the Community Employment Group, and the Local Employment Coordination Unit) were, by the Employment Services and Income Support (Integrated Administration) Act 1998, formed into a new organization (department), Work and Income New Zealand (WINZ), as from 1 October 1998. A purpose of the new agency is to administer the Community Wage in a fully coordinated way, and with an extensive regional network of offices. It also operates a public employment service and provides a wide range of labour market programmes. The primary purpose of WINZ is to assist the greatest number of people (who are eligible) to participate effectively in employment, education, training or community life through income support and or employment assistance. The former Department of Social Welfare is now the Ministry of Social Policy.

191. It should be emphasized, however, that the general features of the New Zealand social security system remain substantially unchanged since their description in the initial report. In particular, income support schemes remain non-contributory and are funded from general taxation. A period of employment is not a prerequisite for receiving income support.

192. A convenient synopsis showing the number of main benefits and pensions in force over time (1940-1997), as well as the development of expenditure on them, is available in tables printed in the New Zealand Official Yearbooks 1997 and 1998, (attached as annex 8). Examples of rates applicable are given in another table from the latter Yearbook (Cash benefits: weekly rates as at 1 March 1998) (attached as annex 9).

193. All branches of social security listed in the reporting guidelines (para. 3 above) continue to exist in New Zealand, and the specific schemes outlined in the initial report remain in place. The main developments are outlined below.

C. Main developments

1. Medical care and maternity benefits

194. Restructuring of the health sector has changed the delivery and nature of some public health-care services. In-hospital treatment in public hospitals is provided free of charge, and women receive free pregnancy and childbirth care. There are subsidies towards general practitioner services and pharmaceutical services on an income-tested basis. If the health need is the result of an accident, most costs are reimbursed under the accident compensation legislation referred to in paragraph 187 above.

195. The 1996 Coalition Agreement identified child health as a priority area, and the Ministry of Health worked with the regional health authorities to implement the policy on free visits to the doctor for children under six. As preparatory work for the National Child Health Strategy, regional child health summits were held during the end of the reporting period to seek the views of child health service providers and advocates on the future direction for child health services

2. Cash sickness benefits

196. Since April 1991, Invalids Benefit and Sickness Benefit (see paras. 225 ff of the initial report under the Covenant) have been paid at different rates, reflecting the likely higher costs associated with long-term incapacity as against shorter-term sickness. In 1998 the Community Wage replaced the Sickness Benefit and introduced two rates - one for those granted a benefit prior to 1 July 1998 and a lower rate, equal to that payable to Community Wage unemployment recipients, for those granted after this date.

197. The weekly after-tax rates of Community Wage (Sickness) (effective 1 April 1999) ranged from $123.23 for a single person aged 18-19 years to $261.90 for a married couple. Rates for those granted prior to 1 July 1998 ranged from $121.77 for a single person aged 16-17 years to $279.08 for a married couple with a dependent child or children. The number of Sickness Benefits in force at 30 June 1999 was 33,022. While in hospital, applicants with no dependent children receive a benefit at the current rate for the first 13 weeks of hospitalization. Thereafter, they receive a reduced rate (but the benefit rate is not reduced for applicants with dependent children).

198. The age of eligibility for the Sickness Benefit has been raised from 16 to 18 years, though in exceptional circumstances some 16-to 17-year-olds continue to qualify. The age of eligibility for the Invalids Benefit remains at 16 years. The personal earnings of the blind may be disregarded in computing the rate of Invalids Benefits.

199. The weekly after-tax Invalids Benefit rates effective as at 1 April 1999 were:

Single age 16-17	$149.59	
Single age 18 and over	$184.85	
Single with 1 child	$242.83	
Single with 2 or more children	$260.76	
Married couple	$308.08	($154.04 each)

200. Family Support (see para. 231 below) is also payable to those with children. The number of Invalids Benefits in force as at 30 June 1999 was 51,284.

201. As a separate item from the Community Wage (Sickness) and Invalids Benefits, a Disability Allowance may be paid to disabled people who receive (or would qualify for) income-tested benefits, to assist with the additional costs associated with disablement. The maximum Disability Allowance (as at 1 April 1998) was $43.39 per week. As at 30 June 1999, 176,121 Disability Allowances were being paid.

202. The Handicapped Child's Allowance has been renamed Child Disability Allowance and is paid to people who care for children who need constant care and attention because of a serious physical or mental disability. This allowance is not subject to an income test, and is paid (as at 1 April 1999) at a flat rate of $32.70 per week. As at 30 June 1999, allowances were being paid in respect of 19,274 children.

3. Old age benefits

203. There have been substantial changes in the area of old age benefits since the initial report. The major concern has been to contain the increase in costs due to a large section of the New Zealand population entering the age for retirement. The main changes are outlined below. As a matter of nomenclature, the previous name of Guaranteed Retirement Income (paras. 235 ff of initial report under the Covenant) was at first, during the period, replaced by the title National Superannuation from 1 April 1992.

204. From 1 April 1992 the age of eligibility for National Superannuation was raised from 60 to 61 years, and is to increase gradually to 65 years by 2001. Also, from 1 April 1992 the threshold for the taxation surcharge on the other income of superannuants (which effectively reduces the amount of publicly provided retirement income as a person's other income increases) was lowered. The threshold then rose substantially at 1 April 1997 and from 1 April 1998 the surcharge was abolished.

205. An accord on retirement income policies between the erstwhile Government and other political parties was signed in August 1993. The purpose of the accord was to achieve political party consensus on retirement income policies so that people could plan with certainty for and during their retirement. The accord covered both publicly provided retirement income and an improved environment for the provision of private retirement savings. The parties agreed that, while people should be encouraged to save for their retirement, they should not be compelled by law, or given tax incentives to do so. Retirement income continues to be provided in an integrated way from both private savings and from public funds.

206. A 1997 public referendum[32] on a compulsory retirement savings scheme resulted in 92 per cent of voters voting against the introduction of a scheme requiring individuals to save for their retirement.

207. New features of publicly provided retirement income agreed in the accord and put in force since 1 April 1994 are that:

(a) National Superannuation be renamed New Zealand Superannuation (its current designation); and

(b) The levels of New Zealand Superannuation payments be maintained within a band of average wage levels so as to maintain a fair relationship with the income of those in the paid workforce. The after-tax benefit for a married couple must be between 65 per cent and 72.5 per cent of net average ordinary-time wages.

208. On 1 April 1999 the principal weekly rates for New Zealand Superannuation were as follows:

	Before tax	After tax
Single person living alone	$255.27	$212.69
Single person sharing	$233.80	$195.84
Married person	$192.14	$162.79
Married couple (both qualified)	$384.28	$325.58
Couple (non-qualified spouse)	$365.02	$310.42

209. At 30 June 1999 there were 440,054 recipients of New Zealand Superannuation. Prior to the increase in age of eligibility on 1 April 1992 there were 509,358 recipients. As at 30 June 1999 there were 8,689 Transitional Retirement Benefits being paid.

210. Older people with disability resulting from war service qualify for Veterans Pension at the same rates as New Zealand Superannuation.

211. In relation to the needs of older people, an innovation was introduced during the period in the form of the Retirement Income Act 1993, which was passed to give effect to aspects of the accord referred to in paragraphs 205 ff above. Part of the purpose of this enactment is to encourage private investment for retirement, offsetting reliance on public funds. Under the Act, an Office of the Retirement Commissioner was established in 1994 with statutory functions:

(a) To promote public education on retirement income issues;

(b) To monitor the effects of retirement income policies in New Zealand;

(c) To advise the Minister of Social Welfare on retirement income issues.

212. Since its inception, this Office has engaged in a range of activities, including public television advertising, aimed at raising public awareness and understanding of retirement income polices and of the need for those who can to make voluntary private provision for their retirement. It has also monitored activities of other countries in the retirement income area, and in New Zealand the levels of public awareness and attitudes related to retirement planning and saving for retirement.

213. Pursuant to the Act, a group set up to review retirement income policies issued a report in December 1997. The main conclusion reached was that the current retirement framework is sound and has the capacity to serve New Zealanders well into the future; and that political parties need consensus on the future shape of retirement income policies and processes. The report emphasized that voluntary private savings are fundamental and that good statistics on saving are needed.

4. Survivors' benefits

214. Survivors' benefits include the Widows' Benefit and Orphans' Benefit (outlined in the initial report under the Covenant) and an Unsupported Child Benefit which was introduced in 1991. The weekly after-tax rates of Widows' Benefit as at 1 April 1999 were:

Single adult	$154.04
Single with one child	$211.82
Single with two or more children	$231.09

215. Family Support is added for those with children (see para. 231 below).

216. The number of Widows' Benefits in force at 30 June 1999 was 9,213.

217. The rates for Orphans' Benefit and Unsupported Child's Benefit vary (with the age of the child) from $71.86 to $102.68 a week (on 1 April 1999). At 30 June 1999 these benefits were being paid to support 6,849 children.

218. The Accident Insurance Act 1998, as well as the previous Accident Rehabilitation and Compensation Insurance Act 1992, provides benefits to the survivors of a person who died as the result of an accident or other event covered by the Act, including a funeral grant, lump sum payment for a survivor's grant, weekly compensation payable to a spouse and an extra weekly payment payable to each child.

5. Employment injury benefits

219. As indicated above in paragraph 187, the Accident Insurance Act 1998 provides a comprehensive system of compensation and rehabilitation for accidental injury. Benefits are paid at a number of levels, generally 80 per cent of average earnings prior to the incapacity or 80 per cent of the minimum weekly wage. The following benefits should be noted:

(a) Children who suffer an incapacitating injury may receive weekly compensation from the date they reach 18 years of age. This provision is also extended to students who are injured while in full-time study which has been continuous since they attained 18 years of age;

(b) Persons who suffer an injury soon after their job has been terminated may have entitlement to weekly compensation if certain criteria are met.

220. In 1993 the provision in the Social Security Act 1964 for payment of a specific miners' benefit was repealed. Since 1971 such cases had been covered by accident compensation legislation, and the very small number remaining in receipt of a miners' benefit were transferred to other benefits.

6. Unemployment Benefits and the new Community Wage

221. Information on protection against unemployment is provided under article 6. Developments relating to the unemployment benefit during most of the review period are summarized below, but are now overtaken by subsequent developments (see paras. 188 ff and 227, 228 below).

222. As foreshadowed in the initial report under the Covenant (para. 248), the eligibility age for the Unemployment Benefit was raised to 18 years. For people aged over 55, the Unemployment Benefit became known as the Fifty-Five Plus Benefit. For this group, after six months on benefit, it became no longer mandatory to maintain registration with the NZ Employment Service.

223. As to the Unemployment Benefit, a stand-down (non-entitlement) period of 26 weeks for voluntary unemployment was introduced in 1991 and reduced to 13 weeks at 1 April 1997. This is applied where applicants for the Unemployment Benefit have without good and sufficient reason left their previous employment or have been dismissed for misconduct. People on a 13-week stand-down may, however:

(a) Receive emergency assistance;

(b) Regain entitlement under certain circumstances after a period of the stand-down has elapsed;

(c) Have their spouse continue to receive half the married rate of benefit, if the spouse remains entitled.

224. The Unemployment Benefit remained subject to an income test.[33] The weekly after-tax rates for this benefit as at 1 March 1998 are shown in annex 9. Family Support (shown in the same annex) was added for those with children.

225. A Job Search Allowance provided time-limited assistance to 16- and 17-year-olds who had completed employment or training and were seeking employment. Where there is family breakdown and the young persons could show that they have no other means of support, the Independent Youth Benefit was available for 16- and 17-year-olds (the rate being the same as for unemployed aged 18-24). A Training Benefit was also established in 1989 to support people in short-term training courses, paid at the same rate as the Unemployment Benefit. There were some changes to Youth Income Support. As from 1 January 1998 young people under 18, not married and without dependents, were not entitled to income support through the Job Search Allowance or Training Benefit. However, those who can show family breakdown remained entitled to the Independent Youth Benefit.

226. As shown in annex 8, at 30 June 1997 there were 140,628 unemployment beneficiaries. These included 10,852 on Fifty-Five Plus Benefit, 2,554 on Independent Youth Allowance, and 10,992 others (mainly on Emergency Benefits). The total had reached a high point

of 217,760 in December 1992. At December 1996 it was 178,539. December figures are usually higher because they include students drawing on the emergency unemployment benefit over the summer break.

227. As already indicated, the Unemployment Benefit as such was, subsequent to the period covered above, replaced during 1998 by the new Community Wage and its associated system (see paras. 188, 189 above). The Community Wage now replaces also the Sickness Benefit, the Young Job Seekers Allowance, the Fifty-Five Plus Benefit, the Emergency Unemployment Benefit and the Training Benefit. It does not replace the Independent Youth Benefit, Domestic Purposes Benefit or Widows' or Invalids' Benefit which remain as they were, but more stringent conditions as to capacity to work apply to the Invalids' Benefit and work testing applies to a wider range of Domestic Purposes Benefits and Widows' Benefits.

228. The weekly rates for the Community Wage in 1998 were:

Single 18-19 years (at home)	$98.58	
Single 18-19 years	$123.23	
Single 25 years and over	$147.89	
Single with 1 child	$211.82	
Single with 2 or more children	$231.09	
Married couple (child/children)	$261.90	($130.95 each)
Married couple (no children)	$246.46	($123.23 each)

7. Family benefits

229. In 1991 the universal Family Benefit, referred to in New Zealand's initial report under the Covenant (para. 254), was abolished and alternative family assistance measures put in place. The Benefit had never been indexed to a fluctuating criterion, and had last been increased in 1979, when it was set at $6 per week per child (about 1 per cent of the average wage at the time of its abolition). The repeal of the Family Benefit in 1991 was accompanied by "same dollar" increases to Family Support, which targets assistance to low-and middle-income families through a tax credit scheme (outlined in para. 256 of the initial report and below, para. 231).

230. In 1991 the age of eligibility for the Domestic Purposes Benefit (DPB) referred to in the initial report (para. 257) was increased from 16 to 18 years for those who had not been married. The DPB can also be paid to a person caring at home for someone who would otherwise be hospitalized, and in some cases to an older woman alone. From February 1999 the requirement of a work test was extended to all DPB beneficiaries whose youngest child is aged 6 or over. Previously, a limited test was applied to those whose youngest child was aged 14 or over. The number of DPB recipients at 30 June 1999 was 110,067.

8. Family assistance through the tax system

231. From 1 October 1999 the tax credits provided to families through the tax system were repackaged. Family Support (already mentioned above) is assistance to all families with children and is paid to both beneficiaries and non-beneficiaries. The rates of family support vary depending on the age of the children and whether the child is the eldest or a subsequent child.

Children	Maximum annual entitlement[34]
Eldest child 16 years or older	$3 120
Eldest child under 16 years old	$2 444
Subsequent child 16 years or older	$3 120
Subsequent child 13-15 years old	$2 080
Subsequent child under 13 years old	$1 664

232. In addition to Family Support as above, families, depending on their circumstances, can qualify for Family Plus - an umbrella system incorporating three tax credits which are designed to give income support to low-and middle-income working families. Family Plus incorporates the Family Tax Credit (formerly the Guaranteed Minimum Family Income), the Child Tax Credit (formerly the Independent Family Tax Credit) and a new Parental Tax Credit. These credits are further described below.

233. The Independent Family Tax Credit (now the Child Tax Credit) first became available on 1 July 1996. It is directed at low- and middle-income families who are not significantly dependent on the State for financial support. The maximum amount that can be claimed is $780 per annum ($15 per week) for each dependent child. As indicated in paragraph 256 of the initial report, the Guaranteed Minimum Family Income tax credit has been available since 1986 (now the Family Tax Credit). Its purpose is to ensure that full-time earners with one or more dependent children receive a minimum family income of $15,080 net of tax for the 1999/2000 income year.

234. From 1 October 1999 a new tax credit was introduced called the Parental Tax Credit. The new credit entitles low- to middle- income working families to financial support of up to $1,200 over an eight-week period (up to $150 per week) for each newborn child after the birth. The new Parental Tax Credit is designed to provide additional financial support to working families for the eight-week period following the birth of a child. The new credit applies to births that occur on or after 1 October 1999.

235. All of the tax credits are subject to abatement depending on the family's income level.

9. Emergency and supplementary benefits

236. In addition to benefits outlined in the initial report, a range of supplementary benefits have been introduced to meet the needs of people in special situations. An Accommodation Supplement (abated by income) provides assistance to low-income earners (and beneficiaries) with high accommodation costs. If accommodation costs are more than 25 per cent of the income, the Supplement meets 70 per cent of the difference, subject to regionally based maxima.

237. In 1992, the Department of Social Welfare set up a Special Needs Grant, established under the umbrella of the Welfare Programme (pursuant to the Social Security Act 1964). Special Needs Grants are ad hoc payments made to those who have an immediate need or an emergency and have no other way of paying for what they need. Some grants have to be repaid. Grants are available to non-beneficiaries as well as beneficiaries, though only a recoverable grant

can be made to non-beneficiaries under the recoverable assistance programme.[35] A Special Benefit may be paid to beneficiaries and non-beneficiaries who do not have enough income to meet ongoing essential expenses and whose individual circumstances warrant a payment being made.[36]

D. Social welfare costs and their consequences

1. Relativity of social welfare costs to gross domestic product; reasons for change, and factors and difficulties affecting the degree of realization of the right to social security

238. Since the early 1970s social welfare costs have increased considerably from a figure of 6 per cent of gross domestic product (GDP) in 1972 to 11 per cent by 1979. They remained relatively steady through the mid-1980s but then expanded again, reaching a high point of 16 per cent of GDP in 1993. By 1999, this had decreased to 14 per cent. Annual figures for the period 1972 to 1999 are supplied in annex 11.

239. The major causes of change during the period have been:

(a) A decline in the number receiving New Zealand (formerly National) Superannuation. A phased increase in the age of entitlement from 60 to 65 years was commenced in 1993 and is due to be completed by 2001. As a result, the number receiving New Zealand Superannuation has gradually declined from 509,000 in March 1992 to 435,000 in September 1999. People who would otherwise have become eligible can access the range of income-tested benefits, where they meet the appropriate eligibility criteria. In addition, a special, income-tested Transitional Retirement Benefit was established which people close to retirement age can access for up to three years prior to qualifying for New Zealand Superannuation. Among the age group affected by the policy change, about one third of men and one half of women are claiming a benefit. At the same time, there has been a noticeable rise in the proportion of both men and women in this age group who remain in employment;

(b) A reduction in unemployment rates, which had risen substantially over the 1970s and 1980s. Unemployment reached 10-11 per cent in the recession of 1991 and 1992, but fell to 6-8 per cent by the late 1990s. The number of unemployment beneficiaries reached a high point of 218,000 in December 1992; by September 1999 it had decreased to 163,000;

(c) An upward trend since 1993 in the number of benefits for single parents, specifically the Domestic Purposes Benefit, from 100,000 to 115,000 over the five years to 1998. Most recently, however, there has been some reversal of this increase, with numbers dropping to 110,000 in September 1999;

(d) A continuing upward trend in the number of people receiving sickness or invalids benefits, from 47,000 in 1990 to 85,000 by September 1999.

240. Measures for containing costs have included the replacement of a universal Family Benefit by the targeted Family Support (para. 231 above) and a lowering of most benefit rates from April 1991. As a result of the cost containment measures, the balance of assistance

provided by the mainstream benefit entitlements versus supplementary assistance, has changed. Supplementary assistance provides "safety net" programmes to help with special circumstances, including high accommodation costs, via provisions such as Special Benefit and Special Needs Grants and the Accommodation Supplement (paras. 236, 237 above). These provisions have long been a feature of the social security system, and have been used to mitigate regional differences in costs, and also the inevitable and valid differences in personal circumstances.

241. In recent years, however, greater numbers of beneficiaries have been receiving these supports. For example, in 1991 38 per cent of unemployment beneficiaries received accommodation assistance; in June 1999 this proportion was 69 per cent. Similarly, in 1991 only 6 per cent of Sickness Benefit recipients were receiving a Special Benefit; this rose to 13 per cent in 1995 but decreased to 10 per cent in 1996 and 6 per cent in June 1999. While the growing rate of such supplements reflects better targeting of limited resources, it also has the potential (because of high effective marginal tax rates) to create problems in promoting a better benefit-employment interface. Some of the increase in the take-up of accommodation assistance reflects market rents for State-owned housing (paras. 367 ff below).

242. The most recent measure for containing costs and encouraging the return or entry of individuals to the work force is, of course, the Community Wage system referred to above in paragraphs 188 ff and the extension of work-testing in relation to the Domestic Purposes Benefit and the Widows' Benefit, but assessment of the effects will need to await a more extended period of operation.

243. Concerns as to costs over the period led to major changes in the accident compensation scheme as already referred to in paragraph 187 above. During the period 1985-1990, the costs of the scheme escalated with expenditure exceeding $1 billion in 1990. This escalation in costs required a revision of the scheme in order to prevent increases in premium payments and the continuation of inequities which had become manifest over a period of time. There were a number of reasons for the increasing costs, including case law developments which expanded the range of claims that could be made. In 1990, employers' contributions covered nearly 70 per cent of all payments, although less than 40 per cent of those payments were for work injuries. Employers were thus funding the costs of employees' non-work injuries. The Government considered this to be unfair since the employer has no control over or responsibility for the actions of employees outside of work hours. Reforms introduced in 1992, and continued in the 1998 Accident Insurance Act, now require employers to fund the costs of work injuries only, while wage earners fund the cost of non-work injuries.

244. In the early stages of the new scheme's operation, certain rigidities resulting from the Act's prescriptive approach became manifest, particularly in the area of social rehabilitation assistance. The measures taken to give flexibility are described under article 12 below.

2. Informal (private) social security arrangements, and relativity of these to formal (public) schemes

245. Generalized social security arrangements on a private basis have not existed in New Zealand, but some private arrangements of a sectoral kind do exist. In particular, private insurance can be taken out with regard to coverage or part coverage of private medical treatment

and hospital care. However, participation in such medical contribution schemes (an increasing phenomenon) does not exclude contributors from having recourse to the free public health system if they so wish. Participation in private pension or superannuation schemes would also not debar contributors from normal entitlement to the New Zealand Superannuation already referred to. Such schemes do exist - notably the National Provident Fund, New Zealand's largest superannuation fund, which provides private superannuation schemes for both employer/employee groups and individual members, with the payment of benefits ultimately guaranteed by the Crown. As indicated (paras. 211 ff above), the Government is encouraging recourse to voluntary private provision for retirement, by publicity and information campaigns. However, there are no tax incentives for voluntary retirement savings.

3. Extent of application of the right to social security; question of those denied access, or disadvantaged groups

246. As outlined above and in the initial report, the social security system in New Zealand provides for a considerable range of assistance with cash benefits paid as of right to those who meet income, residence and other eligibility criteria for each category (which are beyond the scope of this report to give in detail). In addition, as indicated, other assistance over a wide variety of specific matters is available on a discretionary basis to help with specific expenses such as accommodation or other special requirements.

247. In general, it can be said that the identification of disadvantaged or potentially disadvantaged groups has been a preoccupation of New Zealand Governments over the years and that the social security system, as such, has been continually adjusted in that light so far as resources permit. The introduction in 1973 of the Domestic Purposes Benefit, of which increasing use has been made in the assistance of parents caring for children without the support of a partner, is a case in point. The variety and magnitude of expenditure as shown in, for example, annex 8 to this report demonstrate the extent and growth of the general effort over the years.

248. It is also to be noted that as to financial benefits, an extensive regional network of offices under WINZ gives practical access to the system so that people are aware of and enabled to fulfil their entitlements and possibilities. The Department is organized into 13 regions, each managed by a Regional Commissioner. Within each region income and employment services are delivered through a network of service centre offices, where clients meet face-to-face with the case managers. There are some specialized centres which look after particular client groups such as superannuants and students.

E. International cooperation

249. New Zealand has continued to enter into social security arrangements with other countries. It now has reciprocal social security agreements with Australia, Canada, Denmark, Greece, the Republic of Ireland, the Netherlands, the United Kingdom, and Jersey and Guernsey. These agreements provide portability on a range of different benefits, but principally New Zealand Superannuation, Invalids Benefit and Widows Benefit.

250. For some time there has been a Special Portability Arrangement with the Cook Islands, Niue and Tokelau, with which New Zealand has a special relationship. On return to those islands, people eligible for New Zealand Superannuation have been entitled, depending on their original length of residence in New Zealand, to receive up to 100 per cent of the above Superannuation. In February 1999, the New Zealand Government announced that it would reduce the required length of New Zealand residence. It was also indicated that the Portability Arrangement's scope would be extended to include a considerable number of other Pacific Island countries, in the context of New Zealand's proximity to and links with them. The islands concerned are: American Samoa, Micronesia, Fiji, French Polynesia, Guam, Kiribati, the Marshall Islands, Nauru, New Caledonia, the Northern Mariana Islands, Palau, Papua New Guinea, the Pitcairn Islands, Samoa, the Solomon Islands, Tonga, Tuvalu, Vanuatu, and Wallis and Futuna. To this effect, the Social Welfare (Transitional Provisions - Special Portability Arrangement) Amendment Act was passed during 1999. This initiative means that Pacific Island people who have been resident in New Zealand for 20 years (including at least 5 years after the age of 50) will receive 100 per cent of the New Zealand Superannuation whether or not they will retire in New Zealand or on the Islands.

Article 10 - Protection of the family, mothers and children

A. Summary of key developments

251. This section of the report centres on the following key developments:

(a) Prohibition of discrimination on the grounds of marital or family status in the Human Rights Act 1993;

(b) Greater protection for the victims of domestic violence through the Domestic Violence Act 1995.

B. General

252. Much of the information relevant to this article has already been provided in New Zealand's third and fourth periodic reports under the International Covenant on Civil and Political Rights covering the period from April 1988 to December 1993 (paras. 13-24) and from January 1994 to December 1996 (paras. 169-172), respectively; in the second periodic report, and particularly in the third and fourth combined periodic reports under the Convention on the Elimination of All Forms of Discrimination against Women covering in total the period from 1986 to 1997 (under article 16); in the initial report under the Convention on the Rights of the Child (paras. 16-31) and the second periodic report recently submitted.

C. Meaning given to the term "family"

253. In New Zealand, the term "family" usually means a group of people linked by kinship ties and or close affectionate relationships such as marriage. For some years now there has been a noticeable variation in patterns of family formation in New Zealand. Some of the major family forms evident include reconstituted or "blended" families (e.g. resulting from remarriage after divorce), and families with more than two generations living in the same household. The

greatest increase in family type over the last few years has been in the number of one-parent families. The other significant recent change is the increased recognition of the significance of the extended family network, particularly (but by no means exclusively) as it relates to Maori and Pacific Islands peoples.

D. Other changes in family responsibilities

254. While there has been a significant increase in the number of sole-parent families (28.3 per cent of all families with children in New Zealand), with the majority headed by women,[37] it is also to be taken into account that

> "[t]he role of the father appears to be changing, with many men taking on parenting tasks quite different from those undertaken by fathers of previous generations. At the same time that the number of single parent families headed by fathers has risen markedly, statistics also indicate a trend toward increasing father absence in the family."[38]

255. For these reasons, the Commissioner for Children launched a Fathers Who Care project in June 1997 designed to examine these developments and their implications.[39] The research resulted in publications like Fathers Who Care: Partners in Parenting: Focus on Fathers which can be obtained for a small charge from the Office of the Commissioner for Children.

E. Age at which children are deemed to attain their majority for different purposes

256. In general, the extensive information and commentary given in this respect in New Zealand's initial report under the Convention on the Rights of the Child (paras. 16-31) remain valid. However, as was foreshadowed, in 1997 the age of legal sale of tobacco to minors has been raised from 16 to 18 years of age, by an amendment in 1997 to the Smoke-Free Environments Act 1990. The minimum drinking age has been lowered from 20 to 18 years of age by the Sale of Liquor Amendment Act 1999, with effect from 1 December 1999.

257. Since New Zealand's initial report under the present Covenant, the school-leaving age was raised from 15 years (see para. 317 of that report) to 16 years, by means of an amendment in 1991 to section 20 of the Education Act 1989. The idea of further raising the school-leaving age to 17 (mentioned in para. 23 of New Zealand's initial report on the Rights of the Child) has not, on the other hand, been proceeded with following the 1996 general elections.

F. Right to enter into marriage

258. Men and women continue to have the same rights to enter marriage. During the period under review the question as to the rights of persons of the same sex to marry legally was considered. In November 1994 the High Court delivered a declaratory judgement which recognized the right of post-operative transsexuals to marry in New Zealand as a member of their psychological sex (Attorney-General v. Otahuhu Family Court [1995] 1 NZLR 603 (HC) Ellis J). However, the scope of this decision did not extend to homosexual unions. The judge noted that "it was accepted before me that it is implicit in the Act [Marriage Act 1955] that marriage is the union of one man and one woman". In 1996 proceedings were filed in the High Court (Quilter v. Attorney-General (1996) 3 HRNZ 1 (HC) Kerr J) and later in the Court of Appeal (Quilter v.

Attorney-General (1997) 4 HRNZ 170 (CA)) seeking a declaratory judgement as to the right of persons of the same sex to marry legally pursuant to the Marriage Act 1955, leading to the decision that the wording and scheme of the Marriage Act 1955 could not accommodate marriages between persons of the same sex. The circumstances are more fully described in New Zealand's last periodic reports under the International Covenant on Civil and Political Rights (paras. 174-177), and the Convention on the Elimination of All Forms of Discrimination against Women (under article 16), respectively.

259. As indicated in New Zealand's fourth periodic report under the International Covenant on Civil and Political Rights, trends continue for fewer couples to marry and more to live in de facto relationships. This development has reopened public debate on the property rights of de facto couples, leading to the introduction in Parliament, on 24 March 1998, of a De Facto Relationships (Property) Bill intended to provide a property regime where a de facto relationship ends by separation or on the death of one of the partners. The Bill remained under parliamentary consideration during the reporting period.

G. Termination of marriage

260. Under the Family Proceedings Act 1980, applications for dissolution of marriage must still be heard and determined by the Family Court, except that undefended applications can now be heard before a Registrar of the Court, who can make a dissolution order in such a case. This change was effected by the Family Proceedings Amendment Act 1994.

261. Towards the end of the period covered by the initial report on the Covenant, a Working Group on Matrimonial Property and Property Protection had been established by the then Minister of Justice to review family property law. In its report of October 1988, the Working Group made a number of recommendations for changes in the law. In addition, the Law Commission issued a substantial report on succession law, covering matrimonial and other relationships.[40] A Bill (the Matrimonial Property Amendment Bill) largely drawn from the recommendations of the Working Group was introduced in Parliament in 1998, but remained under parliamentary consideration during the reporting period. It is intended to be a companion reform to the De Facto Relationships (Property) Bill already referred to (para. 259 above).

H. Measures to maintain, strengthen and protect the family

1. Family status discrimination

262. An important basic strengthening of legal protection for the family was accomplished during the period by means of the prohibition against discrimination on the ground of family status incorporated in the new Human Rights Act 1993. This Act has been referred to already in Part I of this Report (paras. 26 ff above) and is more fully treated in the commentary regarding article 2 of the International Covenant on Civil and Political Rights given in New Zealand's third periodic report thereon (paras. 13-24). The Act sets out a number of occasions on which the specified unlawful grounds of discrimination will operate to give an unlawful consequence and a remedy (these occasions including employment, access to places, vehicles and facilities,

provision of goods, services, land and housing, and access to educational establishments). The previous legislation had included "marital status" as a prohibited ground of discrimination, which is now defined in detail in section 21 (1) (b) of the 1993 Act as

"the status of being

"(i) Single; or

"(ii) Married; or

"(iii) Married but separated; or

"(iv) A party to a marriage now dissolved; or

"(v) Widowed; or

"(vi) Living in a relationship in the nature of a marriage."

263. The new prohibited ground of discrimination as to "family status", in section 21 (1)(l) of the 1993 Act is also quite widely cast, as follows:

"(l) Family status means -

"(i) Having the responsibility for part-time care or full-time care of children or other dependants; or

"(ii) Having no responsibility for the care of children or other dependants; or

"(iii) Being married to, or being in a relationship in the nature of a marriage with, a particular person; or

"(iv) Being a relative of a particular person;"

264. From 1 February 1994 until 18 January 1995 the New Zealand Human Rights Commission recorded, with reference to the 1993 Act, 167 inquiries relating to the new ground of family status. In the same period 25 formal complaints were received, 16 of which were in the employment context. The number of family status complaints comprised only a minor part (9 per cent) of the total of 285 formal complaints received by the Commission in the year ending 30 June 1997. Most of these (6 per cent of total complaints) were in employment matters. The number of the latter complaints was 16.[45]

265. It should be added that during the period, the Human Rights Commission has made a number of submissions to Parliament on new legislation affecting families or the special protection of mothers and children. These can be found referred to in the Commission's annual reports, copies of which are compiled in annex E to New Zealand's fourth periodic report on the International Covenant on Civil and Political Rights.

2. Domestic violence

266. The most significant legislative measure taken in protection of the family during the reporting period is undoubtedly the Domestic Violence Act 1995, which replaces the Domestic Protection Act 1987. This is directed to dealing more effectively with family violence, which remains a major problem in the community. The new Act is intended to provide greater protection for victims of domestic violence. The legislation covers a wider range of relationships, tailors protection orders, increases penalties, details a new offence for persistent breaches and provides for recognition agreements with other countries.

267. The Domestic Violence Act 1995 acknowledges that victims of family violence (including children) may need protection from a broader class of individual, not necessarily their marriage or de facto partners. This change assists Maori women in particular as they have social obligations and close contact across a broader range of family members, different from non-Maori women.

268. The Act also amended the Guardianship Act 1968 to:

(a) Require the court to determine whether allegations of violence in custody and access proceedings can be proved;

(b) Where the court is satisfied that a party to the proceedings has used violence against a child or a party to the proceedings, not to make a custody or access order in favour of the violent party unless the court is satisfied the child will be safe; and

(c) Empower the court to make interim custody and access orders or to vary existing orders to protect the welfare of the child.

269. In custody cases where violence is alleged, the onus is on that party to satisfy the court that the child will be safe before custody or unsupervised access is granted.

270. Attention is drawn to further commentary about the 1995 Act provided in New Zealand's fourth periodic report on the International Covenant on Civil and Political Rights (paras. 169-172). The text of the Act and of the Government's 1996 Statement of Policy on Family Violence are included as annexes S and T to the same report. Further information - including some statistics showing the extent and incidence of such violence - is given in New Zealand's third and fourth combined periodic reports on the Convention on the Elimination of All Forms of Discrimination against Women (under article 16).

271. Police statistics for the year 1998 indicate that while overall reported crime has dropped approximately 2.5 per cent compared with the previous year, Domestic Violence Act crimes, including breaches of protection orders, rose by 28.4 per cent to a total of 3,669 recorded incidents. The national increase is considered the result of both the 1995 Act's introduction and the police's enforcement of its provisions. The extent of attention being addressed to this issue may be gauged from the fact that for 1998, 81.7 per cent of domestic violence crimes were resolved by the police. This was the third-highest rate of crime resolution for the year in question.

272. In terms of directing various forms of action to deal with family violence, it should be noted that the Government's 1996 Statement of Policy on Family Violence referred to above in paragraph 270 is intended to underpin all future policy and programme development by government agencies which have an involvement in family violence. In this document the Government stated its commitment to meeting obligations under the Treaty of Waitangi,[42] and drew particular attention to the needs of Maori.

273. During the reporting period, the Family Violence Unit of the Department of Social Welfare produced a set of good practice guidelines, which builds on existing practice for various service providers. The guidelines set out the responsibilities and accountabilities of government agencies in the area of family violence, and highlighted areas of interface between government departments and non-government agencies. The guidelines are intended as a foundation from which local communities can establish more detailed procedures reflecting local needs and resources. At the end of the reporting period the Family Violence Unit evolved into the Family Violence Project Team (the Team). This was set up as part of an overall Strengthening Families approach described below, and during the reporting period continued to be based in the Social Policy Agency of the Ministry of Social Policy. The Team provides policy advice on family violence issues, with its primary focus on children and young persons who have been exposed to or witnessed incidents of family violence. The Team is working on a number of projects including: the investigation of specialized family violence prevention services for Pacific Island peoples; the Ministry of Justice-led officials advisory group for the evaluation of the supervised access provisions of the Domestic Violence Act 1995 and Guardianship Amendment Act 1995; and the Department for Courts-led officials advisory group for the process evaluation of the Domestic Violence Act 1995. An Agenda for Family Violence Research was produced in 1998, which identified research at the time being undertaken on family violence in New Zealand. The Team also chairs and convenes, with the Crime Prevention Unit of the Department of the Prime Minister and Cabinet, the Family Violence Focus Group, which brings together representatives from the Government and community family violence sectors. In 1999, it was involved in identifying directions for family violence policy over the next three to five years, including gaps in family violence policy and services.

274. In 1994, the Family Violence Advisory Committee: Te Rangai Whiriwhiri Tukinotanga-a-Whanau replaced the former Family Violence Prevention Coordinating Committee. The Family Violence Advisory Committee provides specialized independent advice to the Minister of Social Services, Work and Income. Since its establishment the Committee has provided advice on such issues as the neglect and the psychological abuse of children, the intergenerational transmission of family violence, the relationship between alcohol and spousal abuse, best practice intervention models, restorative justice, and community notification of sex offenders. The Committee also provided a significant contribution to the development of the Government's 1996 Statement of Policy on Family Violence, the Domestic Violence Act 1995, the Ministry of Health's Family Violence Guidelines for Health Sector Providers to Develop Practice Protocols, and the development of the Breaking the Cycle campaign on neglect. The Family Violence Advisory Committee has identified, as its primary focus for 1999/2000, "children and young persons affected by family violence". Support and resources for the Family Violence Advisory Committee are provided by the Family Violence Project Team already referred to.

275. Recognizing the importance of collaborative efforts to secure the safety of children, the Children, Young Persons and Their Families Agency of the Ministry of Social Policy, the New Zealand Police Force, and the National Collective of Independent Women's Refuges were involved in a joint project aimed at mitigating the effects of family violence on children in 1999. The goals are to improve inter-agency collaboration and communication, to ensure that support services are available to both adult and child victims and to continue to hold offenders accountable for their actions. Project tasks have been the development of a risk assessment tool for use by police when attending family violence incidents in homes where there are children; further research into best practice models; the design and delivery of combined training to staff of each participating organization; and the development of a model of child advocacy services.

276. In addition, the New Zealand Community Funding Agency of the Ministry of Social Policy (see also paragraph 286 below) purchases services from a number of community organizations to provide services to victims of family violence and offenders as well as victims' support groups, such as women's and family refuges, rape crisis and sexual abuse services, and men's groups providing education and treatment for violent men. Victims of sexual abuse may also lodge a claim for cover under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 and gain access to counselling and other entitlements, such as the independence allowance.

I. Government measures (including benefits) for families

277. As will appear from the information given under article 9, many of the social welfare benefit measures available in New Zealand either do or may support the family, even if not phrased expressly in terms of a "family" unit. These include the previous Unemployment Benefit, the new Community Wage, the National (now New Zealand) Superannuation, and the Domestic Purposes Benefit available to a parent caring for children without the support of a partner.

278. In 1991, the Government indicated[43] that benefit eligibility would be based on a "core family" test of need, the core family being defined as:

(a) A single adult with no dependent children;

(b) Sole parent, with children;

(c) A couple with no dependent children;

(d) A couple with children.

A number of the targeted social assistance schemes outlined under article 9 above contribute to the protection of the family in this sense.

279. The Social Security Act 1964 itself is concerned with need rather than traditional concepts of the family and expressly accords the Social Security Commission a discretion to:

(a) Regard as an unmarried person any married applicant or beneficiary who is living apart from his wife or her husband, as the case may be;

(b) Regard as husband and wife any man or woman who, not being legally married, have entered into a relationship in the nature of marriage.

280. Where other social security-related measures or benefits more specifically bear on the family, the endeavour is increasingly made to cast them not narrowly in terms of traditional family units, but in more extensive or generic terms. Thus, the family support tax credit as such (para. 231 above) is expressed, in the Income Tax 1994, in formulas which benefit persons who, whether with or without spouse, are the principal caregivers in respect of one or more dependent children. Similarly, in the Children, Young Persons, and Their Families Act 1989, recognizing and utilizing the "family group" for relevant purposes under that Act (see, for example, New Zealand's initial report on the Convention on the Rights of the Child (para. 124)), this unit is expressly defined in section 2 (1) in that Act as

"including an extended family -

"(a) In which there is at least 1 adult member -

"(i) With whom the child or young person has a biological or legal relationship; or

"(ii) To whom the child or young person has a significant psychological attachment; or

"(b) That is the child's or young person's whanau or other culturally recognized family group."

281. In the same Act, the Director-General of Social Welfare's power to make payments in order to meet the reasonable needs of children and young persons provides for such grants to be made to "any parent or guardian or other person having the care of the child or young person".

282. It may be noted that in this and other respects the Children, Young Persons and Their Families Act 1989 expressly declares in its preamble its purpose: to advance the welfare of and make provision for assistance to children and young persons as members of "families, whanau, hapu, iwi[44] and family groups".

283. The Domestic Violence Act 1995 applies not only to married and de facto spouses (as under the previous Domestic Protection Act 1982 referred to in the initial report on the Covenant (para. 336)), but also to same-sex partners, family and household members, and those in close personal relationships. "Family member" is defined to include, inter alia, any "person who is a member of the person's whanau or other culturally recognized family group".

284. As to the mode of central organization to handle family matters, an important role is played by the Social Policy Agency of the Department of Social Welfare and since 1998 the Ministry of Social Policy. Under this agency, the key focus of the social services strategy is to enable families to become stronger and less likely to require crisis intervention from the State. Strengthening Families initiatives have accordingly been developed with the aim of assisting families to meet their care, control and support responsibilities to their children and improve the ability of families to resolve difficulties and problems and breaking the intergenerational cycles of disadvantage and long-term reliance on social assistance. The Strengthening Families strategy is a multisectoral approach including the health, education, welfare, labour, justice and housing sectors within Government. Strengthening Families was operating with 50 separate management groups throughout New Zealand at the end of the reporting period.

285. In addition to the family violence projects already described, a further initiative arising out of the Strengthening Families strategy is Family Start. Family Start is an early intervention service which aims to provide support for families with newborn infants. Families will be offered the programme when a child is born, through referrals from medical professionals such as general practitioners, maternity carers and well-child providers. The service, established in 1998 in West Auckland, Whangarei and Rotorua, will work with up to 850 families a year. An expansion to a further 13 sites was announced during 1999. As well, a service very similar to Family Start, Early Start, has been established in Christchurch.

286. The trends of policy noted above have also led to the establishment in May 1992 of the New Zealand Community Funding Agency as part of the Department of Social Welfare. The Agency has been responsible on behalf of the Government for allocating and delivering funding to local community and iwi-based social and welfare service providers throughout New Zealand. Clearly, the idea of extended family and related group responsibilities is central to the work of this Agency, the operations of which (and of the Children, Young Persons and Their Families Service of the Department of Social Welfare) are summarized in an extract from the New Zealand Official Yearbooks 1997 and 1998 (attached among the supplementary materials).

287. In 1998 the Children, Young Persons and Their Families Service and the New Zealand Community Funding Agency were integrated to become the Children, Young Persons and Their Families Agency (CYPFA). CYPFA usually gives priority to those cases showing visible and severe signs of abuse. In this regard, attention is being given to the concerns about "at risk" or multiproblem families described in the Commissioner for Children's report.[45] However, preventive programmes, such as a 1998 Breaking the Cycle media campaign aimed at alternatives to smacking, continue to raise public awareness generally about family violence issues.

J. Maternity protection, including maternity or parental leave

288. There have been no significant changes to the law on maternity protection during the reporting period. However, pursuant to the major restructuring of public health services outlined under article 12 below, a systemic change has been made in that, under the Health and Disability Services Act 1993, the Government now requires the central Health Funding Authority to purchase and provide a range of maternity services free of charge to women.[46]

289. Women continue to be able to receive free pregnancy, childbirth and postnatal care from general practitioners or independent midwives (through benefits paid by the Health Funding Authority) or by attending antenatal clinics established in connection with public hospitals. Some women choose obstetric care from a specialist and may then be charged by the specialist over and above the rate provided by the benefit.

290. Approximately 98 per cent of births take place in hospital, but independent midwives and general practitioners may provide care for those women who choose to have their baby at home. Antenatal classes, to prepare parents for their baby's arrival, are available through some hospitals, from independent midwives, voluntary organizations and groups that have a direct contract with the local Health Funding Authority.

291. All maternity hospitals are licensed under the Hospitals Act 1957, and the Ministry of Health is responsible for ensuring that regulations regarding buildings, equipment and staff are observed.

292. Expenditure on maternity services compared with other major health benefits is shown in a table from the New Zealand Official Yearbook 1998, Trends in expenditure on major health benefits (attached as annex 12).

293. The situation concerning maternity and parental leave remains as outlined in New Zealand's initial report under the Covenant (paras. 303 ff). Information showing the results of recent research into New Zealand's practice in this regard is provided in the third and fourth combined periodic reports under the Convention on the Elimination of All Forms of Discrimination against Women (under article 11).

294. The Government has carefully considered the Committee's expression of hope (in its concluding observations on New Zealand's initial report) that New Zealand will examine the possibility of withdrawing its reservation to the Covenant concerning the full implementation of article 10 (2) as it relates to paid maternity leave or leave without adequate social security benefits.

295. During the reporting period the Government did not propose to remove the reservation. In contrast to the contributory social security schemes in many countries through which paid maternity leave is funded, New Zealand's social security system is based on general taxation. Income support is therefore available to individuals and families on the basis of need. Families with a low income as a result of taking parental leave may be entitled to income support for the duration of the leave. As already mentioned under article 9, the new Parental Tax Credit was recently introduced, taking effect from 1 October 1999 (para. 234 above). The Parental Tax Credit provides extra financial support of up to $150 per newborn child for up to eight weeks to qualifying families after the birth of a child or children. During the reporting period, employers and employees are also free to negotiate paid parental leave within the framework of the Employment Contracts Act 1991, and a number in fact do so.

296. The Committee may also wish to note measures taken by the Government to redress a fairly low level of awareness regarding entitlements under the Parental Leave and Employment Protection Act 1987.

K. Protection of children and young persons

297. Most of the detailed information required to complement paragraphs 309-345 of the initial report under this heading has been provided in New Zealand's initial and second reports on the Convention on the Rights of the Child, following the Government's ratification of that Convention on 6 April 1993. Further updating was provided in the supplementary information provided to the Committee on the Rights of the Child when the initial report was presented to that Committee on 20 and 21 January 1997.

1. General

298. Three matters are addressed elsewhere in this report, to which the Committee or (in relation to the third) the Committee on the Rights of the Child, has drawn attention. Unemployment rates of young people (including Maori and Pacific Island people) continue to be of concern. This issue and measures taken in respect of it have been covered under article 6. Also being given attention is the educational achievement of Maori and Pacific Island people in New Zealand. This is discussed in New Zealand's tenth and eleventh consolidated periodic report under the International Convention on the Elimination of All Forms of Racial Discrimination (para. 69), and under article 13 below. Finally, youth suicide rates are of continuing public concern, as youth remain constantly over-represented in suicide statistics compared with all other age groups. This is discussed under article 12 below.

2. Childcare institutions and arrangements

299. In New Zealand, all childcare services are part of the early childhood care and education sector. All early childhood care and education services are bound by requirements established under the Education Act 1989.

300. In 1997 dollar terms, government expenditure on early childhood education rose from $200 million for the year ending June 1992, to $230 million for the year ending June 1996. The Childcare Subsidy Programme also provides financial assistance to low income families with dependent children to obtain access to pre-school childcare services. At June 1997 there were 24,857 subsidies being paid.

301. More detailed information on early childhood care and education is given in the initial report under the Convention on the Rights of the Child.

3. Disabled children[47]

302. From 1 July 1993, responsibility for disability support services programmes provided by the Disabled Persons Community Welfare Act 1975 was transferred from the Department of Social Welfare to the health sector, which now has responsibility for the delivery of the programmes. The Ministry of Health has also responsibility for related policy.

303. The Ministry of Health has been developing an extensive needs assessment process in order to establish individuals' access to appropriate services and to generate greater flexibility in the delivery of the appropriate level of services for all persons, including children, with

disabilities. The role of the Department of Social Welfare (and since 1998 WINZ) in assisting children with disabilities focuses on social security support for families with children with disabilities.

4. Social Workers in Schools project

304. A pilot project, Social Workers in Schools, was initiated in June 1999 by the Ministry of Social Policy. The Government's goal for the project is to improve prospects for children and young persons whose social and family circumstances place at risk their chances of achieving good education, welfare and health outcomes. Within this goal, the achievement of well-being for children and young persons and strengthening families/whanau to meet their care and support responsibilities towards their children and young persons have been identified as subgoals. Services are to be targeted predominantly to primary school communities with high levels of social need, high proportions of Maori and/or Pacific Island students, and a demonstrated commitment to actively support the programme. Following the pilot stage, a relevant scheme is to become fully operational in the year 2000.

5. Youth

305. The Ministry of Youth Affairs established in 1989 (see initial report under the Convention on the Rights of the Child (para. 8)) has concentrated during the review period upon unemployment, education and training, health, income, justice and crime prevention. The Annual Reports 1996-1998 of the Ministry are enclosed among the supplementary materials. It will be seen from the last of these that a major interest of the Ministry has been the development of the Youth Suicide Prevention Strategy referred to under article 12 below.

306. The Ministry has also developed a document (Realizing the Potential) as a means of identifying and analysing the Government's youth-related policies in order to improve their future development (attached among the supplementary materials together with a related guide).

307. The Department of Internal Affairs administers a Community Project Workers Scheme, which funds 30 salaries for community agencies to employ youth workers. These youth workers work with young people at risk of damaging their health and well-being, with particular focus on at-risk behaviour such as criminal offending. The Department also provides a small fund to encourage development and uptake of training opportunities for youth workers with the aim of increasing the quality of youth work activities.

308. Important legislative changes during the review period were as follows:[48]

(a) The Domestic Violence Act 1995 (paras. 266 ff above) has strengthened the protection of children from domestic violence;[49]

(b) The Crimes Amendment Act 1995 makes it unlawful for a New Zealand citizen or resident to have sexual relations with a child while abroad. The legislation makes it an offence for a person, while outside New Zealand, to engage in sexual conduct with a child that, if done in

New Zealand, would constitute one of the sexual offences against children under the Crimes Act 1961. An ancillary offence makes it unlawful to assist other people to travel overseas for the purpose of having sex with children, or to promote "child sex tours";[50]

(c) Pursuant to the Adoption (Intercountry) Act 1997, New Zealand has acceded to the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. The effect of the 1997 Act is now to meet the requirements of good intercountry adoption practice as set out in the Convention which has, by the Act, been given the force of law in New Zealand;

(d) As a major social policy initiative, the Child Support Act was passed in 1991. This sets out and provides the means of enforcing the obligations of parents to maintain their children regardless of the parents' marital relationship or whether or not the parents are guardians of their children. Among other aims, this measure is directed towards requiring non-custodial parents, especially fathers, to fulfil responsibilities towards their children. The definition of marriage in the Act includes relationships in the nature of marriage and same-sex relationships. The Act is administered through the Child Support Agency of the Department of Inland Revenue. The Child Support Act 1991 is described further in New Zealand's initial report under the Convention on the Rights of the Child (para. 140); in the second periodic report and third and fourth combined periodic reports under the Convention on the Elimination of All Forms of Discrimination against Women (under article 16); and in the fourth periodic report under the International Covenant on Civil and Political Rights in relation to article 24 (paras. 187-190). The last citation gives information about reviews of the Act conducted in 1993 and 1994.

6. Employment of children

309. A specific legislative step to be noted - as indicated in paragraph 257 above - is the raising in 1991 of the school-leaving age (for compulsory education) from 15 to 16 years. This step also effectively raised the minimum age of employment, apart from part-time work outside school hours. Section 30 of the Education Act 1989 making it an offence to employ under-age persons within school hours or in circumstances which interfere with the person's schooling (see initial report under the Covenant (para. 301)) has also been amended accordingly.

310. As already noted, a minimum wage has been stipulated since 1994 for employees aged 16-19 years (para. 115 above).

311. As has been indicated, it is not legal to employ persons under 16 years of age in paid employment during school hours, but part-time employment outside school hours can be engaged in by persons under 16 provided it does not interfere with schooling. Occupational health and safety measures relevant to the latter type of employment are expressly set out now in Part V - Duties in Relation to Young Persons - of the Health and Safety in Employment Regulations 1995 made under the Health and Safety in Employment Act 1992, which give criteria as to safe areas of work and exclude, for example, injurious tasks and the use of machinery.[51] Regulation 58 in Part V makes provision against the employment of children between the hours of 10 p.m. and 6 a.m., in substitution for the previous provision (under the 1981 legislation) referred to in the initial report under the Covenant (para. 342). A proviso to

this regulation would enable such employment if "the employee's employment is in all respects in accordance with an approved code of practice relating to the employment of people under the age of 16 years between those hours in work of the kind the employee is doing". No approved code of practice under the Act has, however, been issued during the reporting period.

312. There is a long-established practice in New Zealand whereby children engage in part-time paid work such as the delivery of newspapers in their neighbourhood, or holiday work such as fruit picking. It is considered that the employment of children in this type of work is not harmful, and indeed is socially desirable, since it prepares them for independence and greater responsibility. How many children, and in what age groups overall, engage in such activities is difficult to assess, as exact statistics are not gathered. For example, a major indicator - the quarterly Household Labour Force Survey - does not encompass anyone below the 15-19 age group, and the employment statistics of persons of school age in this group (the 15-year-olds) are not disaggregated.

313. A table attached to paragraph 345 of New Zealand's initial report provided broad-band statistics, based on the 1976, 1981 and 1986 censuses, relating to labour force participation by persons in the 15-19 and 20-24 age groups. Comparable data, based on the 1991 and 1996 censuses, are now attached to the present report as annex 13.

314. The extent to which children are employed in their families' households, farms or businesses is also not ascertained. The census figures in annex 13 include persons aged 15 years or over who work as unpaid workers in a family business, but do not disaggregate the 15-year-olds within the total.

315. It may be apparent from the information provided in New Zealand's initial report under this heading, and in more detail in the initial and second reports on the Convention on the Rights of the Child, that a considerable endeavour is made in New Zealand to ensure that no specific groups of children and young persons do not enjoy measures of protection and assistance at all or do so to a significantly lesser degree than the majority. Of key importance, in this connection, are the role and work of the Commissioner for Children in monitoring the condition of children in New Zealand, fostering the development, within the Ministry of Social Policy, of policies and services designed to promote the welfare of children and young persons, and investigating complaints made by members of the public on matters relating to children's and young persons' welfare. The Commissioner seeks to give widespread publicity to his work and to the terms of the Convention on the Rights of the Child, so that there is more effective dissemination of information about this subject. Within the year ending 30 June 1998 the Commissioner, together with the Ministry of Youth Affairs, supported this purpose with a research project surveying 1,000 young people on their understanding of the Convention.

316. The Ministry of Youth Affairs (see paras. 305 ff) is active in promoting knowledge of the rights of young persons, for example, through its Web site.

Article 11 - Right to an adequate standard of living

A. Summary of key developments

317. This section of the report centres on the following key developments:

(a) Introduction of Special Needs Grants and Special Benefits to guarantee an adequate standard of living;

(b) Establishment of a joint food standard system between New Zealand and Australia (the Australia New Zealand Food Authority).

B. Summary of relevant background

318. The review period saw further economic reform in an effort to halt the decline in living standards (relative to other countries) occurring in the 1970s and early 1980s.

319. To avoid the creation of hardship, the broad strategy was to tighten the extent to which welfare assistance is targeted to those in need. Reductions in some general entitlements were accompanied by a compensatory expansion of selective, income-tested provisions. The aim was to ensure that no one's standards of living fell below the "floor level" (as set by the level of social security entitlements) while at the same time reducing assistance to those above that level.

320. The process has not been easy. During the early 1990s, disposable household incomes fell in real terms across the lower to middle deciles of households, and unemployment peaked in 1992 at over 10 per cent. Countries with growing economies have passed New Zealand in terms of standards of living. Not surprisingly, both the process and direction of the reforms have been vigorously debated and there has been some opposition. Critics have objected to the short-term dislocation and the financial losses suffered by some groups. Some have argued that these costs have not been fairly distributed.

321. The erstwhile Government has acknowledged that there have been some difficulties in introducing such wide-ranging reforms. Programmes taking into account any pockets of hardship have been developed by the Government, such as the introduction of a Special Needs Grant and Special Benefit referred to under article 9 (para. 237 above). However, there has been evidence of a low take-up of the Special Needs Benefit during the reporting period.

322. As indicated under Part I of this report, until the Asian crisis, New Zealand had entered, and was in a position to sustain, a period of economic growth during the mid-1990s (paras. 14-22 above). Policy priorities since then have focused on maintaining this growth, accelerating job creation, reducing unemployment, and building a strong and effective training and education system.

C. Standard of living, and changes in it

323. New Zealand does not use an official poverty line or other measure of standard of living adequacy. The Household Economic Survey can, however, be used to track changes over time in the level and distribution of households' equalized disposable incomes. The following summary draws on material from a recent publication New Zealand Incomes.[52]

324. Over the period from 1982 to 1996, measured in constant (March 1996) prices, the median income of households in the bottom quintile declined, from $15,600 to $14,800. Over the same period, the median income measured over all households also declined, from $27,800 to $25,600, while the average income rose, from $30,900 to $31,800. In terms of relative income, the ratio of the bottom quintile's median to the overall median rose from 56 per cent in 1982 to 58 per cent in 1991 and remained at 58 per cent in 1996. Households in the lowest quintile are disproportionately represented by single people over 65 and sole-parent households.

325. Another way to look at relative income adequacy is to estimate the proportion of households and of individuals who are in households with incomes of less than a given percentage of the median real equivalent disposable income for all households. In 1996, 6 per cent of households (7 per cent of individuals) had incomes below 50 per cent of the median and these were the same percentages as in 1982. Using a somewhat higher reference point, 12 per cent of households had incomes less than 60 per cent of the median in 1996, a reduction of 14 per cent in 1982. The proportion of individuals in these households remained steady at 14 per cent.

326. Data regarding another indicator of standard of living - life expectancy - were, for the period 1975-1988, provided in New Zealand's initial report under the Covenant. Further data, covering the period 1955-1997, are now provided in the tables attached as annex 15.[53] It can be noted that Maori life expectancy, while rising, continues to lag behind that of the total population.

D. The right to adequate food

327. New Zealand continues to have a varied, nutritious and plentiful food supply. In order to improve the data on food distribution, the Department of Health developed, during the reporting period, indicators of food security (that is, access by all people at all times to the food needed for a healthy life) for inclusion in the National Nutrition Survey (NNS), which is discussed below.

328. The Government's efforts to ensure minimum food supplies to needy groups have focused on ensuring adequate income with which appropriate food purchase choices can be made, and during the reporting period the Government continued to provide financial support for a number of community and voluntary organizations involved in food relief (initial report under the Covenant (para. 365)). During the reporting period, evidence of need led the Government to make changes in 1994 to the supplementary programmes operated by the then Department of Social Welfare's Income Support Service. Targeted assistance is provided through Special Needs Grants (see above, paras. 237, 324) for food. There has been a consequent increase in government support through the Special Needs Grants for food. The number of such grants developed from 121,112 in 1994 to 268,874 in 1995 (calendar years). Statistics show there

were 289,488 food grants for the year ending 30 June 1996 and 254,560 for the year ending 30 June 1997.[54] Expenditure for the year ending 30 June 1997 totalled NZ$ 22,458,502. Food topped the list of expenditure for Special Needs Grants at the end of the reporting period.

329. In relation to New Zealand's initial report under the Covenant under article 11, one of the issues raised by the Committee concerned the extent and implications of the use made of volunteer-run foodbanks in New Zealand. It has to be noted that according to the New Zealand Council of Christian Social Services, the demand on Salvation Army foodbanks rose about 1,180 per cent between 1990 and 1994. The considerable variety of factors which could lead to occasional or regular recourse to foodbanks during the reporting period are outlined in Foodbanks published in the New Zealand Official Yearbook 1996 (attached among the supplementary materials). Further commentary is available in the Public Health Commission's National Plan of Action for Nutrition (pages 14, 15) referred to in paragraph 334 below.

330. Average weekly household expenditure for food does not appear to have increased markedly over the period. It was calculated at NZ$ 105.50 for 1990/91 and at NZ$ 108.60 for 1996/97.[55]

E. Measures taken to improve food consumption and foster good nutrition

331. A key issue emerging for most New Zealanders is not the distribution or the availability of food, or the level of food consumption, but the need to adopt a more healthy diet, in particular by lowering intakes of sodium and saturated fats. This has been the focus of considerable activity during the review period.

332. As foreshadowed in the initial report under the Covenant, the Ministry of Health released a National Nutrition Policy in 1992, providing broad objectives relating to food accessibility and security. A commitment to develop a National Plan of Action for Nutrition arose from New Zealand's attendance at the International Conference on Nutrition held in Rome in 1992. In 1995, the Public Health Commission published such a National Plan of Action for Nutrition, building on the work of the National Nutrition Task Force mentioned in New Zealand's initial report. This document (attached among the supplementary materials) provides a 10-year strategic direction for food and nutrition, focused on household food security, food quality and safety, and promoting healthy diets and lifestyles. Within each of these themes there are recommendations on including public health policy, public health programmes, and research and information. Problems (for example, as to diabetes) and needs of Maori and Pacific Island people are among the matters addressed.

333. The Plan, for example points out, that

> "adequate distribution of food can only be determined at a household level. This is where consumption choices are made between what is available, and budget choices between food consumption and other expenditures ... Where adequate food consumption at household level is matched by adequacy in other basic material needs, health and food security are more likely to be stable."[56]

It therefore states as one of its objectives that "strategies have to be developed to reduce the impacts of unemployment, inequalities in wealth and housing, transport, and literacy problems on health".[57] Special Needs Grant, as discussed above in paragraphs 220 and 309, is one example of how the Government ensures that everyone can make that adequate choice.

334. Upon a restructuring effected by the Health and Disability Services Amendment Act 1995, the public health policy and promotion functions of the Public Health Commission were absorbed into the Ministry of Health in July 1995, and the former body was disestablished. The National Plan of Action for Nutrition was adopted by the Ministry of Health, assisted by the Food and Nutrition Advisory Committee (a group of external experts in nutrition, food science technology, food safety and consumer issues).

335. Whether taken pursuant to the National Plan, or already envisaged, a number of information initiatives have been taken at national level during the review period including food and nutrition guidelines, for example, for infants (0-2 years), children (2-12 years) adolescents, pregnant women, lactating women and the elderly. These are distributed free of charge through the national health education provider network.

336. The National Heart Foundation for New Zealand initiated a three-year (1995-1998) health sector contract for the promotion of food and nutrition guidelines. The settings for these health promotion projects include schools, workplaces, food service catering companies, early childhood centres, Pacific Island communities and health professional training.

337. Specific Maori nutrition programmes include Te Hotu Manawa Maori, which operates in partnership with the National Heart Foundation and has been established to provide health promotion services and programmes targeting Maori.

F. Nutrition surveys

1. National Nutrition Survey

338. The National Plan of Action for Nutrition emphasized the need for a National Nutrition Survey as a means of gaining more accurate current information on the nutritional status of New Zealanders. This Survey, conducted on the basis of interviews undertaken and data collected between December 1996 and December 1997, was initiated towards the end of the review period and represents a major investment in nutrition information by the Ministry of Health on the Government's behalf. Maori and Pacific Islander advisers have been involved in the Survey at all stages, so that data collection would be culturally appropriate and adequate and the eventual information will be as useful as possible for Maori and Pacific Island people.[58]

2. Other surveys

(a) New Zealand Therapeutic Database

339. The food intolerance database component of the New Zealand Food Composition Database (initial report under the Covenant (para. 392 (b))) has now been further developed and funded by the Ministry of Health. Ingredient and proximate macronutrient data on the

composition of food are obtained from manufacturers. These data are used to provide publications and information to dieticians and for people with allergies to food ingredients, such as peanuts, gluten and legumes.

(b) General survey data

340. The Ministry of Health continues to arrange for and purchase a wide range of survey data on food consumption, food monitoring and surveillance (for example, total diet survey, projects relating to food safety and standards, attitudes towards food and food behaviour). From 1997 Food Balance Data Sheets (initial report (para. 392 (a)) have not, however, been available from Statistics New Zealand as the latter has ceased undertaking the annual agricultural survey which provides the data for these sheets. This decision limits the Ministry of Health's ability to monitor food available for consumption in New Zealand.

C. Measures to protect food quality and improve methods of production and conservation

1. Food standards

341. With reference to New Zealand's initial report under the Covenant (para. 379), a specific treaty between New Zealand and Australia was concluded in December 1995 to establish a joint food standards-setting system in the interest, inter alia, of protecting health and safety. The food trade between the two neighbouring countries is large, and extensive in variety.

342. Uniquely for both New Zealand and Australia, the treaty established a single regulatory system shared by two sovereign countries. The Australia New Zealand Food Authority is responsible for recommending standards that, when agreed to by relevant ministers, have the force of law in both countries. New Zealand industry, consumer groups and public health and community associations are able to participate fully in the standard-development process. The New Zealand Food Act 1981 was amended in June 1996 to provide for an administratively based standard-setting system, with ministerial approval of standards and adoption of such standards by reference. Transitional food standards currently apply in New Zealand and Australia while a major review of all food standards is undertaken and an Australia New Zealand Food Standards Code completed.

2. Food hygiene

343. With reference to New Zealand's initial report under the Covenant (paras. 368-373), some change has occurred in regard to food hygiene. While Food Hygiene Regulations in New Zealand used to focus on the inspection of premises, they now concentrate on audits of process. This provides a much broader mechanism for ensuring hygiene across all aspects of production and puts the onus on the industry to maintain standards. In addition, changes in food safety requirements for domestic food were made by the Food Amendment Act (No. 2) 1996. This established a system of exemption from the Food Hygiene Regulations where appropriate authorizations had been obtained. The Act is intended as a transition to increased voluntary self-regulation in the domestic market.

344. It should also be explained, with reference to the initial report (para. 373), that responsibility for the safety of food consumed in New Zealand and exported is divided between the Ministry of Agriculture and Forestry (MAF), the Ministry of Health, and territorial authorities. MAF is responsible for the safe production of domestically consumed and exported meat, game and dairy products (excluding retail outlets) and for exported seafood products. The Ministry of Health is responsible for the safety of food (excluding sanitary requirements for meat, game and dairy) intended for the domestic market, including imported food, and shares the responsibility with territorial authorities for the regulation and control of the premises providing food for the domestic market. The Ministry of Health is also responsible for the investigation of outbreaks of suspected food-borne illness in humans.

3. Enforcement

345. The enforcement role of the Area Health Board health protection officers outlined in the initial report (para. 375) was during the period taken over by the Crown Health Enterprises (CHEs), now replaced by the central Health Funding Authority.

H. Measures taken to develop or reform existing agrarian systems and improve food production

1. Subsidies

346. Contrary to the practice of all other developed countries, New Zealand does not subsidize agricultural production, nor does it impose import barriers other than for health and quarantine purposes. As a result, the New Zealand agriculture sector continues to be market-oriented. Much of New Zealand's food production is exported. With resources allocated on the basis of market returns, the sector has achieved greater diversity in its range of both outputs and destination markets.

347. Assistance to New Zealand agriculture is negligible by world standards.

348. Agricultural sector revenue continues an upward trend. It reached $11,129 million in the year ending March 1998 and $11,298 million in the year ending March 1999.

2. Environment and agriculture

349. The environment has been a key concern for the New Zealand Government over the past decade. Maintaining and improving the environment is a key government objective, which is seen as vital both from the point of view of the New Zealand population as well as the country's status as a food trading nation. New Zealand is a signatory to key international environmental agreements, including the Framework Convention on Climate Change, the Convention on Biological Diversity, the Montreal Protocol and the Basel Convention on the Control of Transborder Movements of Hazardous Wastes and their Disposal.

350. New Zealand farmers have the advantage of an extensive pastoral-based farming practice. This low-intensity farming system has natural advantages, including improved animal welfare and low disease pressure requiring lower levels of animal remedy applications.

351. The Resource Management Act 1991, as discussed in New Zealand's initial report under the Covenant, is a major regulatory tool to promote sustainable exploitation of natural resources. The responsibility for decision-making has been devolved to local government which are developing tools, systems and experience to deliver on their responsibilities for managing outcomes. While there are still issues regarding consistency of application, whether national guidance is required, and whether existing property rights provide incumbency obligations on regulators, the broad consensus is that the Resource Management Act 1991 and its associated processes are the appropriate tool to manage environmental issues.

I. The right to adequate housing

1. General

352. During the reform period, the Government instituted fundamental changes in housing policy aimed at targeting those most in need of housing assistance. These changes are outlined in paragraphs 367 ff below. So far as organizational changes are concerned, the Housing Restructuring Act 1992 established Housing New Zealand Ltd., a registered company wholly owned by the Government, to manage the State rental housing stock. Accompanying restructuring created the Ministry of Housing, which is tasked with providing policy advice on housing and administering the Residential Tenancies Act 1986 (initial report under the Covenant (para. 409)). This left the Housing Corporation of New Zealand (initial report (para. 410)) with responsibility for home lending functions. In December 1998 the policy division of the Ministry of Housing was transferred to the Social Policy Agency, Department of Social Welfare (now called Ministry of Social Policy). This move was intended to integrate housing policy more effectively with other aspects of social policy.

353. The Social Security Amendment Act 1993 established an Accommodation Supplement (para. 236 above) which provides assistance with housing costs for low income families. This supplement is further discussed below in paragraphs 370, 371.

354. There is a range of other new legislation which has impacted on the delivery of the right to adequate housing. Under the Human Rights Act 1993, discrimination in housing and accommodation on certain grounds is prohibited (see above, paras. 54-56). The Resource Management Act 1991 (para. 351 above) now enables local authorities to control the adverse effects of land use, including the effects of housing development. The Building Act 1991 also sets performance standards for new construction and safety and health standards for existing buildings.

2. Housing status of New Zealanders

(a) General

355. The main source of housing data is the five-yearly population census. The 1996 census recorded 1,276,332 private dwellings. This was an increase of 8.4 per cent from 1991 (1,177,665 dwellings) and a 17.2 per cent increase from 1986 (1,088,601 dwellings).

356. The 1996 census found that 99 per cent of New Zealanders were living in conventional permanent dwellings (either detached houses or flats) - 70.5 per cent of these were owner-occupied. A small number of dwellings (3.8 per cent) were provided rent free. Of the remaining 26 per cent that were rented, over a quarter (28 per cent) were rented from the State or a local authority. Only about 0.6 per cent of households (7,338 dwellings) live in temporary accommodation such as caravans, and a lower proportion live in dwellings with three or more people per bedroom. Crowding is not an extensive problem; according to the census, of 1.2 million households, 1.4 per cent were households which would be deemed by the Canadian National Occupancy Standard to require two or more additional bedrooms. The average number of occupants per dwelling declined over the 10-year period 1986 to 1996, from 2.89 to 2.77, and over half the dwellings housed just one or two people. Over 80 per cent of dwellings were detached houses rather than apartments or semi-detached or terraced housing.

357. While New Zealanders are generally well-housed (and reticulation of electricity, water, and sewage disposal is almost universal), a 1993 Ministry of Housing survey of local authorities estimated about 3,000 occupied dwellings as seriously substandard. A high incidence of this is in the rural areas of the East Coast and Far North (Northland) of the North Island. In the latter regard, see further comments below in paragraphs 361 ff.

358. In the 1996 census around 960 people were classified as being of "no fixed abode" (compared with 594 in the 1991 census). This includes people sleeping in night shelters and emergency accommodation, people staying temporarily with friends or relatives but otherwise with no permanent address, and people sleeping in parks, under bridges and so on. Despite the efforts of census enumerators to locate all the homeless through social agencies, some may have been missed.

359. The Government has no set limit of housing affordability in terms of rent as a percentage of income. About 15,600 renters were estimated to be in the category of spending over half their income in net rent (rent exclusive of supplementary accommodation assistance) as of 30 June 1998.[59] Under the benefit system, anyone on a low income paying over 25 per cent of net income on rent or 30 per cent of net income on home ownership costs may apply for the Accommodation Supplement assistance. In the 1997/98 financial year, the Government spent over $794 million on the Accommodation Supplement, about 2 per cent of total government expenditure.

360. Generally, a conspectus of trends as to housing status over the reporting period may be gained from annex 16 to the present report, which gives updated tables[60] of average weekly expenditure on housing, and of tenure of occupied private dwellings for the years 1990-1997 (these supplement tables 9 and 10 provided with the initial report under the Covenant). Also attached, in annex 16, are diagrams showing the nature of the tenure of dwellings lived in, according to occupants' labour force status and ethnicity, respectively, as at the time of the 1996 census.[61]

(b) Maori

361. During the reporting period there has been a major refocus on the delivery of housing assistance for the special needs of Maori households. The delivery of housing loans and rental

accommodation previously provided by Te Puni Kokiri (Ministry of Maori Development) has now been standardized for delivery through mainstream agencies. Most of the rental accommodation previously administered by Te Puni Kokiri has now been sold to local tribal authorities. The Housing Corporation has introduced a programme to provide loan finance to people on low incomes in the rural areas, especially Maori. This Low Deposit Rural Lending Programme is designed to address problems of substandard housing in parts of Northland and the East Coast of the North Island indicated in the initial report under the Covenant (para. 416). The Papakainga scheme (lending for multiple-owned Maori land outlined in the initial report (para. 422)) provided 46 loans worth $1.8 million in 1994/95. In the year to June 1996, a total of 76 new loans were issued under the Papakainga and Low Deposit Rural Lending schemes.

362. More recently Te Puni Kokiri has again become involved in delivery of a housing programme. It did so in pursuit of one of the Government's strategic priorities for 1999 to 2002, which is to "extend economic and social opportunities by ... significantly improving the housing status of Maori ...". As part of the Policies for Progress package in September 1998 the Government introduced a number of initiatives aimed at finding relatively low-cost ways to address supply-side housing problems. The Group Self-Build (GSB) pilot programme is a new approach directed at low-income households, and particularly Maori low-income households. The programme involves groups of motivated households working together, under supervision, to build houses for themselves. The Government contributes up to $3,000 per house to pay for programme management costs. The rationale is that the households' labour contribution will signal their commitment and make the houses more affordable by significantly reducing construction costs. Although it is aimed at individual households, GSB may produce more general benefits for the communities in which it operates.

363. Te Puni Kokiri's role is as a facilitator, and it can also provide grants for project development and planning. Housing Corporation of New Zealand or other lenders provide the finance. The impact of the GSB pilot scheme will be assessed in 2000 and will be discussed in the next periodic report under the Covenant.

364. Housing New Zealand Ltd. produces posters and brochures describing programmes in the Maori, Samoan, Tongan, Tokelauan, Niuean and Cooks Island Maori languages as well as in English.

365. Further detail on housing assistance programmes for Maori and Pacific Islands people can be found in New Zealand's tenth and eleventh (consolidated) reports under the International Convention on the Elimination of All Forms of Racial Discrimination.

(c) Women

366. Further comment on housing for women may be found under article 14 of New Zealand's third and fourth (consolidated) reports under the Convention on the Elimination of All Forms of Discrimination against Women.

3. Changes in housing policy

(a) General

367. Housing assistance is provided in a number of different ways, principally through:

(a) Supplementary income support to people on low incomes;

(b) The supply of rental properties;

(c) Assistance for community housing for people with special needs; and

(d) Programmes to address specific Maori housing issues.

Many local authorities also provide housing in their communities.

368. In addition, the housing rental market is partly regulated, with a Tenancy Tribunal which provides some protection to both landlords and tenants and settles disputes.

369. In summary, the main changes that have taken place in the provision of housing assistance by the Government have therefore been:

(a) A move towards market rents for State housing;

(b) A move away from subsidizing mortgages;

(c) Compensatory introduction of the Accommodation Supplement.

These and related changes are further commented on below.

(b) The Accommodation Supplement

370. The Accommodation Supplement replaced most previous forms of State housing assistance, and since July 1993 all low-income households have been eligible to apply for the Supplement irrespective of whether they live in public- or private-sector housing and whether they are renters, mortgagors or boarders. A number of transitional measures, including the Tenure Protection Allowance for elderly or disabled State tenants, gave ongoing assistance to State tenants who had lost access to existing subsidies after the Accommodation Supplement was introduced.

371. Beneficiaries may also qualify for a Special Benefit in addition to the Supplement if they face high living costs. As at 30 June 1998, almost 312,000 Accommodation Supplements were being paid out compared with 149,000 Accommodation Benefits in March 1993. The figure for June 1998 included approximately 139,000 private renters, 45,000 renters from Housing New Zealand, 71,000 boarders, and 48,000 mortgagors. Data showing trends in the cost of the original Accommodation Benefit and then of the Accommodation Supplement (and Special

Benefits), and the numbers of recipients, during the reporting period are provided in annex 17.[62] Annex 17 also includes an analysis of the use of the Supplement "by type of accommodation".

(c) Rental housing

372. Housing New Zealand Ltd. (para. 352 above) owns approximately 60,000 units. It is required to rent its vacant units primarily to people on low incomes and to give priority access in allocations to people in temporary accommodation or in accommodation detrimental to their health or well-being. In addition, local authorities own about 14,800 rental units according to the 1996 census. These properties are let mainly to elderly people, although a few local authorities provide a small number of rental properties to low-income families as well. Local authorities used to let their accommodation below market rates. However, now that they no longer receive low-interest loans for housing from the central Government, some local authorities have begun to charge market rents.

373. During the reporting period the erstwhile Government introduced a policy whereby all new State tenants paid market rents, and income-related rents for existing State tenants were phased out and (where tenants were eligible) replaced by income supplements. 95 per cent of State tenants were paying market rents as at 30 June 1996. The 1996 census showed that, as of that time, Housing New Zealand Ltd. renters took up 17 per cent of all Accommodation Supplements. State tenants aged 55 and over were granted a rent rebate for three years (to be phased out in 1997/98) to allow them time to move to more affordable accommodation. Even though Accommodation Supplements were available to assist tenants in need, concern was voiced by Church leaders, social agencies and unions that this policy contributed to poverty in New Zealand.

(d) Ownership assistance

374. Subsidized mortgage rates and deposit assistance for new Housing Corporation (para. 369 above) borrowers have ended and subsidized rates for existing borrowers have been phased out. The Housing Corporation, however, continues to provide housing loans for those low-income households which have difficulty obtaining loans in the private sector. It targets areas of particular housing need. The Low Deposit Rural Lending Programme (para. 361 above), piloting in the rural areas of the East Coast and Northland, combines education about housing matters with practical assistance to improve access to finance and facilitate home ownership. As at 31 July 1999, the cumulative total of lending under the Programme comprised 323 loans valued at $22.6 million.

375. During 1994, the Government introduced a programme to enable Housing New Zealand Ltd. tenants to purchase their rental properties. Known as the Home Buy Programme, tenants are entitled to a suspensory loan from the Housing Corporation of New Zealand. Mortgage finance is generally provided by private-sector lenders although the Housing Corporation has a residual role as a lender of last resort. As at 30 June 1996 approximately 1,000 sales to tenants had been completed at an average price of $90,000.

(e) Community Housing Limited

376. In line with the reforms in the housing sector, assistance for community housing needs has been restructured. Community housing organizations (which provide housing to people with special needs) can rent or borrow from whom they choose in order to perform their role. Many provide their services under contract with government agencies. The Government provides support for community housing through Community Housing Limited, a fully owned subsidiary of the Housing Corporation of New Zealand. Community Housing Limited rents approximately 1,000 properties to community groups who support people with physical, intellectual and psychiatric disabilities, women's refuges, emergency accommodation and support for children. The company's Disability Modifications Project facilitates the modification of houses to suit the needs of individuals with disabilities.

(f) Emergency housing

377. The Government contracts with voluntary organizations to provide emergency accommodation to those who cannot find suitable housing in the short term. It is not known with any certainty how many emergency houses there are. An unknown number of properties are available as emergency housing which are neither funded nor owned by the Government. For example, church ministers are known to make rooms available for emergency housing from time to time. At June 1996 there were estimated to be about 185 emergency houses throughout the country of which the Government funded around 100.

378. In July 1996, the Government introduced the Short-Term Supported Housing programme (STSH). This programme offers a range of services that address the problems that give rise to demand for emergency housing (such as domestic violence). The service includes budget advice and parenting skills and is available to high-need families who seek emergency housing.

4. Other matters relative to the right to adequate housing

(a) Use of scientific and technical knowledge and of international cooperation for developing and improving housing construction, including safety measures against earthquakes, floods and other natural hazards

379. Restructuring of the building code system has taken place during the review period, as foreshadowed in the initial report under the Covenant (para. 446). The Building Industry Authority, a Crown entity established under the Building Act 1991 and responsible for writing the New Zealand Building Code, manages building controls. The Code specifies the essential requirements for building performance to ensure the health and safety of building users and protection of other people's property. The Building Industry Authority issues guidance documents, which provide optional methods of satisfying the Code. Important requirements of the Code are durability, ease of access for all users and energy efficiency in building. Ongoing administration is the responsibility of territorial authorities, which must confirm that building projects satisfy the Code provisions.

(b) Special problems of housing, water supply and sanitation in rural areas

380. As already mentioned, a survey of local authorities conducted in 1993 found evidence of substandard housing in some rural areas. The Government has implemented initiatives to deal with these problems (paras. 361 ff above).

381. The Department of Social Welfare, now WINZ, can provide a benefit advance to home-owning beneficiaries or pensioners for essential repairs and maintenance or to install essential services or appliances.

(c) Measures taken for the protection of tenants, such as rent control and legal guarantees

382. The Ministry of Housing, in administering the Residential Tenancies Act 1986, provides tenancy advice to residential tenants and landlords, and from 21 offices throughout the country provides mediation and dispute resolution through the Office of the Tenancy Tribunal constituted under the Act. The tenancy mediation and tribunal services continue to be in heavy demand. In 1995/96, 41,691 applications were made to the Tenancy Tribunal. Of those 12,516 were resolved by mediation and 23,197 were referred on to the Tribunal for a hearing.

383. The number of tribunal decisions which result in evictions each year is not recorded. However, the most common type of case dealt with through mediation or by the Tribunal is a request for eviction due to rent arrears, with over 14,000 applications in the year ending June 1996. It is likely that only a minority of these cases result in eviction, as landlords are seeking to recover the rent owed rather than have the tenants evicted.

Article 12 - The right to physical and mental health

A. Summary of main developments

384. This section of the report centres on the following key developments:

(a) Restructuring of the public health system to encourage more efficient service delivery;

(b) Introduction of targeted programmes to address priority areas such as Maori, child and mental health;

(c) Expansion of legislative protection for privacy, ethics and consumer rights in health care provision.

B. General: National Health Policy

385. New Zealand remains committed to a comprehensive system of health benefits which are available to all. However, as noted in New Zealand's initial report (para. 576), and as indicated

during New Zealand's introductory statement regarding it,[63] the question of the best way of funding and organizing public health services has been the subject of ongoing debate and effort. The goals have similarly been subject to reappraisal.

386. As at the end of the previous reporting period, the New Zealand Health Charter adopted in 1989 with its 10 health goals for priority attention was the basic expression of government policies (see initial report (para. 469) and its relevant enclosures). These goals were superseded in 1994 when the Public Health Commission (established by the Health and Disability Act 1993) released A Strategic Direction to Improve and Protect the Public Health: The Public Health Commission's Advice to the Minister of Health 1993-1994. In 1997 the strategic direction was again reviewed following wide consultation. The outcome of this review was Strengthening Public Health Action: The Strategic Direction to Improve, Promote and Protect Public Health,[64] more briefly called the Strategic Direction (attached among the supplementary materials with its accompanying Background Paper). This document remains the main current expression of the strategic direction to public health in New Zealand. It has latterly been complemented by the issuance in 1999 of the Ministry's of Health, The Government's Medium-Term Strategy for Health and Disability Support Services (the Medium-Term Strategy, attached among the supplementary materials). The Ministry of Health's Progress on Health Outcome Targets 1998 (attached among the supplementary materials) is the most recent detailed review of the state of public health in New Zealand and monitors progress towards the specified public health targets. Much of the data contained in this last publication extends back to the beginning of the present reporting period and in significant respects gives an account of trends.

387. During the reporting period a major restructuring of the system for funding and providing health care took place. Prior to the reforms, primary health care and disability support were financed directly by central Government, while public hospitals were operated by locally elected Hospital Boards that were publicly funded. In 1989, more accountability for health spending was pursued by creating 14 Area Health Boards, with some members appointed by the Minister of Health. The next reforms implemented from 1993 (similar to those in the United Kingdom) were designed to separate the purchaser of health care from the provider of health services, with the aim of providing better and more cost-effective health care. As part of this process, funding and responsibility for a range of support services for people with disabilities transferred from the Department of Social Welfare to the Government's health sector.

388. The previous health system based on the Area Health Boards mentioned in the initial report (paras. 565, 566) became transitional by July 1993, when Regional Health Authorities (RHAs) were established to purchase all forms of health and disability care from health providers. As to the latter form of care, the RHAs were given responsibility for contracting for disability support services such as home help and personal support, and for equipment and home modifications, and the basis of entitlement shifted from disability category to individually assessed needs. The Health and Disability Services Act 1993 was the major instrument for effecting this change. Some 23 public hospitals previously owned by local government were made into Crown Health Enterprises (CHEs) - government-owned agencies - to provide (primarily secondary) health care under contract to the local RHAs.

389. Later, from July 1997, the four RHAs were amalgamated into one organization - the Transitional Health Authority (THA) - as it was desired to integrate the RHAs into a single

national funding agency in order to eliminate duplication, reduce transaction costs, and promote consistency of approach. The THA assisted the Government in creating the Health Funding Authority (HFA), which replaced the transitional organization from 1998, pursuant to the Health and Disability Services Amendment Act 1998 and which funds personal health, disability support and public health services. The three primary functions of the HFA are:

(a) To monitor the need for personal health, disability support and public health services for New Zealanders;

(b) To fund health and disability services for people; and

(c) To monitor the performance of providers with whom the Authority enters into purchase agreements.

390. Personal health services are provided to people for health purposes. Disability support services involve care, support, and promote independence for people with disabilities. Personal health services tend to be shorter term in nature and bring about an improvement or stabilization of a health condition. Disability support services are generally longer term. Public health services, on the other hand, aim to prevent disease, prolong life and promote health by such activities as ensuring the safety of food and water. Successful public health programmes will minimize the risk of disease and reduce the need for hospital and health services. The HFA is responsible for deciding what they will purchase within each service category, subject to the Government's requirements.[65]

391. In 1998 the CHEs were redesignated as Hospital and Health Services (HHSs). Unlike the CHEs, which had to make a return on equity, the HHSs are now run as not-for-profit companies. While health providers from the public, private or voluntary services are contracted by the HFA (which has a regional presence in the four regional areas) to supply health services, the main suppliers, in practice, are the HHSs, which are publicly owned.

392. In the above process, the previous Department of Health referred to in the initial report has been replaced from mid-1993 by the Ministry of Health. The Ministry has a stronger focus on providing policy advice to Government, its original health purchasing functions having been taken over by the RHAs and now by the HFA. Its current functions include strategic planning; health policy advice; review; specification and assessment of services; regulation and protection; and monitoring the performance of the funder.

393. To complete the picture, it should also be noted that when the Public Health Commission was disestablished in January 1996, its policy functions were transferred to the Ministry of Health and its purchasing functions to RHAs. The Health Act 1956 was amended to add the Commission's statutory function for public health to the Ministry of Health's existing public health regulatory function. The Ministry was required to establish a Public Health Group and appoint a Director of Public Health, and to report annually on the state of the nation's public health. The Ministry has been reviewing the public health legislative framework during the end of the reporting period, a process which will lead to an improved focus for the management of public health issues, particularly emerging public health risks, across the sector.

394. Pertinent information, in summary form, about the rationale for the structural changes, and about the modus operandi of the new system, is given in an Overview of the New Zealand Health Sector published on the Ministry of Health's Web site in November 1997 (attached among the supplementary materials).

395. The New Zealand health system is made up of public, private, and voluntary[66] sectors which interact to provide and fund health care. Over 75 per cent of health care is publicly funded. The way in which the public health sector works in terms of health and disability services paid for by the HFA, and what it provides to the public in that regard, are described in a booklet, What Can I Expect? issued by the Authority in October 1998 (attached among the supplementary materials).[67] Facilities provided during the reporting period by another public authority - the Accident Rehabilitation and Compensation Insurance Corporation - are separately referred to immediately below.

C. Accident compensation: the ACC

1. General overview

396. Since the previous reporting period, there have been three substantive pieces of legislative change affecting the accident insurance scheme:

(a) The Accident Rehabilitation and Compensation Insurance Act 1992;

(b) The Accident Rehabilitation and Insurance Amendment Act No. 2 1996; and

(c) The Accident Insurance Act 1998.

397. The Accident Insurance Act 1998 has established competitive delivery in respect of the work injury component of the accident insurance scheme. A new State-owned enterprise, @Work Insurance, has been established to compete with private insurers for delivery of work injury/accident insurance. The Accident Compensation Corporation (ACC), established in 1974, continues to cover accidental injuries suffered in non-work circumstances. ACC's role in relation to work injuries is to cover those self-employed people who do not opt to be covered by a private insurer, and it continues to manage work injuries incurred prior to 1 July 1999.

398. The accident compensation scheme continues to provide comprehensive 24-hour, no-fault accident insurance to people injured in New Zealand and, in some cases, New Zealand residents travelling overseas. Visitors to New Zealand are also covered. In personal terms, people can make a claim to the accident insurance scheme if they experience:

(a) A physical injury;

(b) A mental injury related to a physical injury;

(c) Mental injury arising from sexual assault or abuse;

(d) Some work-related gradual process-type injuries.

The eligibility of people for the statutory entitlements provided by the scheme is the same, regardless of which insurer provides cover.

399. ACC and other insurers are required to assist with medical costs and to provide various forms of financial compensation and other aid in the event of someone suffering personal injury by accident, depending on circumstances. As at the end of the reporting period, the range of services available were those briefly described in the booklet Your Guide to ACC printed by the Corporation in July 1999 (enclosed among the supplementary materials). The extent of activity of the Corporation may be gauged from the figures of expenditure on medical and other rehabilitation, and compensation benefits for the years 1995 to 1997 inclusive [68]

400. Your Guide to ACC shows that most of the benefits outlined in New Zealand's initial report (paras. 5-32 ff) remained intact during the present reporting period. The Accident Rehabilitation and Compensation Insurance Act 1992 and the Accident Insurance Act 1998 ensured that the accident compensation scheme continued to provide social rehabilitation assistance, vocational rehabilitation generally for up to 12 months, a non-taxable weekly allowance (the Independence Allowance), and compensation for loss of earnings. But lump sum compensation for permanent disability and loss of enjoyment of life (initial report (para. 538)) was abolished, although transitional provisions were allowed some claimants.

401. Substantial changes were also made to the ACC scheme by a 1996 Amendment to the 1992 Act. This amendment:

(a) Introduced flexibility into the provision of social rehabilitation;

(b) Enabled ACC to purchase elective health care directly;

(c) Redesigned the Independence Allowance as compensation for permanent impairment;

(d) Clarified the objective of vocational rehabilitation; and

(e) Provided for the work capacity assessment procedure.

These changes, which are further described below, provided a range of tools for ACC staff to manage claimants' return to work and/or independence. The changes, continued in the Accident Insurance Act 1998, have given insurers the legislative mandate to provide the seriously injured with the necessary rehabilitation and treatment.

2. Social rehabilitation

402. The prescriptive regulatory environment established by the 1992 Act did not permit the ACC to meet the needs of the seriously injured, and resulted in some overservicing of the

needs of other claimants. The ARCI (Complex Personal Injury) Regulations issued under the Act in 1994 then gave the ACC the flexibility to meet the needs of very seriously injured claimants. The 1996 statutory amendment extended the scope of flexible decision-making to all ACC claimants, allowing the development of individually tailored packages of support to meet claimants' assessed needs and achieve more appropriate rehabilitation. Flexibility was implemented in aids and appliances and home help in December 1996. Provision of the remaining social rehabilitation entitlements[69] became flexible later in 1997. The Accident Insurance Act 1998 provides all insurers with discretion in relation to tailoring social rehabilitation to claimant need.

3. Elective purchasing

403. The introduction of discretion into treatment meant that ACC was able to purchase elective treatment directly from both public and private providers. Previously ACC paid for elective surgery according to its commitments set out in the Regulations, however, the high co-payments of the ACC recipients meant that some claimants were unable to access treatment and remained on weekly compensation, at a far greater cost to the scheme.

404. Trial contracting of elective health purchasing began in September 1996; and from 1 July 1997 ACC has purchased elective health care as part of its normal business. From 1 July 1999 private insurers have taken responsibility for directly purchasing elective health care required by employees.

4. Independence allowance

405. The 1996 Amendment redesigned the Independence Allowance as compensation for permanent impairment assessed using the American Medical Association Guidelines for the Evaluation of Permanent Impairment. Claimants assessed as having an impairment of 10 per cent or more became entitled to a weekly payment until they die. The allowance is structured so that the more seriously injured claimants receive more. The changes to the Independence Allowance took effect from 1 July 1997. Following the introduction of the Accident Insurance Act 1998, a person may now receive a separate Independence Allowance for each injury that he or she suffers after 1 July 1999. The maximum allowance is $61.68 per week. When there are multiple independence allowances payable, the proportion of total impairment relating to each injury is assessed and the corresponding allowance relating to each injury can be determined.

5. Vocational rehabilitation

406. The 1996 Amendment clarified the objective of vocational rehabilitation (to obtain or maintain employment, or otherwise to gain a capacity for work) and extended entitlement to a maximum of three years. The Accident Insurance Act 1998 has extended entitlement of vocational rehabilitation to those on parental leave.

6. Work capacity assessment procedure

407. The 1996 Amendment replaced the previous work capacity test and (from December 1997) permitted the ACC to cease paying weekly compensation to people who remain incapacitated for their pre-injury employment but who have a capacity for other work by reason of their education, experience and training. This is an exit mechanism designed to encourage claimants who have received rehabilitation to return to work and to ensure that the scheme's assistance is directed towards claimants with a genuine incapacity. However, concern has been expressed that the new case management regime might have contributed to a 78 per cent drop in claims for industrial disease claims, and a 47 per cent drop in claims for soft tissue injury during the reporting period.

408. The procedure is retained in the Accident Insurance Act 1998 and allows insurers to use medical and vocational assessors to assess whether a claimant has a capacity for work. If claimants have such a capacity they have a three month grace period before weekly compensation ceases to be paid by an insurer.

409. Updated information on various of the above aspects of ACC's work is given in the Corporation's Annual Report 1998[70] (attached among the supplementary materials).

D. Percentage of GDP spent on health

410. Health expenditure in New Zealand amounted to an estimated $7,994 million for the financial year ending 30 June 1998. This represented 8.2 per cent of New Zealand's GDP (as compared with around 7.7 per cent for the preceding six years) and was equivalent to a $2,114 expenditure per annum per head of population. An estimated 77.1 per cent of this expenditure came from public sources.[71]

411. Health-related spending accounted for about 16.5 per cent of total government expenditure in 1998 as compared with about 13 per cent before the structural reforms. This corresponds to about a 10 per cent increase in real per capita expenditure from 1987-1988 to 1997-1998. New Zealand's levels of health expenditure, national product, and its health status are in the middle range for OECD countries.

E. Measures taken to reduce stillbirth rate and infant mortality

412. As already indicated in paragraphs 288 ff above, the provision of free pre- and post-natal health care remains an integral part of the measures taken to reduce the stillbirth rate and infant mortality. A number of pregnancy and childbirth services continue to be delivered free of charge by midwives, general practitioners and specialists including health promotion and education, pregnancy information for individual women and their families and whanau, personal care during pregnancy, diagnostic services, care during childbirth and care following birth.

413. The overall rate of late foetal deaths for the total population decreased from 5.0 per 1,000 total births in 1985 to 3.2 per 1,000 total births in 1994, representing a 36 per cent decrease in the rate over the past decade. During the same period there was a 53 per cent decrease in Maori late foetal deaths from a rate of 4.3 per 1,000 to 2.0 per 1,000. The Pacific

Islander late foetal death rate has remained higher than all other groups over most of the past 10 years, although because of the relatively small size of the Pacific Islander population there is considerable volatility in the annual rate. New legislation affecting the certification and registration of foetal deaths was introduced on 1 September 1995. This fundamentally changed the definition of "stillborn child" (foetal death) and the definition of perinatal death. The new definition includes foetal deaths of 20 weeks' or more gestation or 400 grams birth weight. The total 1997 perinatal death rate (new definition) was 10.2 per 1,000 total births, unchanged from 1996. The total post-neonatal death rate (3.2 per 1,000 live births) was 47.5 per cent lower than in 1988 and was the lowest rate ever recorded.

414. New Zealand's infant mortality rate decreased by approximately 35 per cent over the period 1987-1996. Although there has been a gradual decline over the last 15 years in the Maori infant mortality rate it remains approximately twice that for Pakeha Europeans. Almost without exception, the rates for Pacific Island infants were lower than European rates until the 1980s. Since then Pacific Island rates have not declined while there has been rapid improvement in the European infant mortality rates. This resulted in the 1989-1993 Pacific Island rate exceeding the European rate. These trends in infant mortality have also been referred to in New Zealand's third and fourth (consolidated) reports under the Convention on the Elimination of All Forms of Discrimination against Women (under art. 12).

415. In 1997, 40 per cent of all post-neonatal deaths and 21 per cent of all infant deaths in New Zealand were due to sudden infant death syndrome (SIDS). Between 1985 and 1997 the total SIDS rate declined from 4.2 to 1.5 deaths per 1,000 live births. SIDS decreased by 66 per cent between 1988 and 1997. In 1984 and 1989 the Maori SIDS rate had peaks of 9.9 per 1,000 live births, but by 1994 had decreased to 5.5. Over this period, however, the gap between the Maori and the non-Maori SIDS rate has widened. In the past, the SIDS rate for Pacific Island people has been lower than the Maori and European rates, although there is now limited evidence that it may be higher than the European rate. Two programmes in this public health area are Maori-run SIDS programmes, one contracted to Ringa Atawhai (an autonomous body of community health workers) and financially supported during the reporting period by the Northland Health RHA; and the He Mate Ohorere (a Maori SIDS) programme provided by Mid-Central Health RHA. The issue of the different infant mortality and SIDS rates for Maori has also been discussed in New Zealand's tenth and eleventh (consolidated) reports to the Committee on the Elimination of Racial Discrimination (para. 90).[72]

416. Reference may also be made to annex 19 to the present report which sets out data (from the New Zealand Official Yearbook 1998) showing:

(a) Infant mortality rates for New Zealand and selected OECD countries in 1985 and 1995;

(b) New Zealand foetal and infant mortality rates in 1994, disaggregated as to Maori, Pacific Island peoples and others;

(c) New Zealand infant mortality rates for 1983-1994 comparing Maori and non-Maori rates.

F. Water

1. Access to safe water

417. New Zealand has 1,638 community drinking (or reticulated) water supplies and these serve 85 per cent of the population. Of these, 7 per cent (serving 54 per cent of the population) are considered safe, while a further 2 per cent (serving 5 per cent of the population) are of borderline safety. However, 19 per cent (serving 18 per cent of the population) are graded D or E in terms of quality. This does not necessarily mean that the supplies are actually contaminated, merely that the risk is high. Most of these supplies serve small communities. The remaining 71 per cent of water supplies (serving 8 per cent of the population) have not been graded because they are in communities of less than 500 people. Approximately 15 per cent of the population are not connected to community supplies. Since 1992 the Ministry of Health has undertaken a programme to improve water quality management. This has involved the review of management procedures and of legislation relating to the public health aspects of drinking water. It has also involved the revision of public health grading procedures for community drinking water supplies, the development of an accessible national drinking water database and the publication of drinking water guidelines, annual reports on drinking water quality, and standards. In a change of focus since New Zealand made its initial report under the Covenant, public water supplies are now graded in respect of the reliability of the safety of the drinking water supply, based on what emerges from the householder's tap, and not on the basis of the method of treatment.

2. Access to adequate excreta disposal facilities

418. National data on sewerage systems are only now beginning to be compiled after a gap of over a decade, and an accurate comprehensive view was not available during the reporting period. 1976 and 1981 surveys showed that just over 60 per cent of the population were connected to sewage treatment plants. Around 17 per cent of the population had their sewage discharged untreated, mostly into the sea, and around 20 per cent were not connected to a sewerage system at all, but relied on septic tanks. In the intervening decade, the percentage connected to treatment plants is believed to have risen to about 80 per cent, while those discharging untreated sewage are just a few percent. Some 15-20 per cent of people probably still use septic tanks, which are used in small towns, rural communities and beach settlements. Many small communities or individual houses are likely to remain on septic tanks or more advanced on-site treatment and disposal systems. When well designed and installed, they can perform very adequately.[73]

G. Infant immunization against diphtheria, pertussis and other diseases

419. In accordance with the policy stated its initial report under the Covenant (para. 504), New Zealand continues to emphasize the importance of primary health care, especially in relation to immunization. In 1992, the New Zealand Communicable Diseases Centre conducted a national immunization coverage survey. Over 95 per cent of children received their first immunization episode at six weeks of age. Less than 60 per cent of children surveyed (and only about 42 per cent of Maori children), however, had been fully immunized by their second birthdays.

420. A free series of immunizations is available to children in New Zealand to protect them from nine serious diseases. To be fully protected against the nine diseases, children must have all immunizations in the series. The Government's National Immunization Strategy launched in 1996 - Immunization 2000 - aims to have 95 per cent of children fully immunized at the age of two by the year 2000, from fewer than 60 per cent in 1992.

421. A mass measles campaign was held in 1997 to limit the spread of a measles epidemic. This campaign successfully prevented over 90-95 per cent of the predicted measles cases.[74]

H. Life expectancy

422. Data regarding life expectancy tables for the reporting period are provided under paragraph 326 above.[75] The Background Paper to Strengthening Public Health in Action states that:[76]

> "The life expectancy of New Zealanders continues to slowly increase but is below the average for OECD countries. Life expectancy for the years 1995-97 was 74.3 years for males and 79.6 years for females. Maori life expectancy, however, is approximately six years less for both males and females, although this differential has decreased considerably over the last 40 years."

I. Access to trained medical personnel

423. In terms of the Medium-Term Strategy document already referred to (para. 386 above), New Zealanders, wherever they live, are entitled to expect to receive the same level of service to address the same level of need and ability to benefit.

J. Access to maternity services

424. Access to maternity services is provided to women and their families throughout pregnancy, childbirth, and the first four to six weeks of a baby's life. These services are provided in the home and hospital by a range of health professionals, for example, midwives, general practitioners and obstetricians. During pregnancy, women choose a Lead Maternity Carer to provide care throughout pregnancy (see also paras. 288 ff above).

K. Health of the indigenous people of New Zealand

425. Although, as shown earlier (for example, in paras. 412 ff above), there has been improvement in some health indicators during the reporting period, the health status of Maori as compared with non-Maori continues to be lower. Over the past two decades Maori life expectancy has increased significantly and Maori infant mortality rates have continued to decline. However, Maori life expectancy and mortality rates are still worse than those of non-Maori. Maori tend to have higher death rates in most general areas of disease than non-Maori. Causes of death showing disproportionately high rates for Maori compared with non-Maori include diabetes, lung cancer and hypertension. The death rate from diabetes for Maori is almost six times that of non-Maori.

426. In recognition of the need to focus effort to improve the situation, and in acknowledgment of the special status of Maori under the Treaty of Waitangi as tangata whenua (people of the land), Maori health has become a priority area for health gain objectives.

427. The Health and Disability Services Act 1993 has provided a legislative framework. Section 8 sets out the Crown's obligation to provide its funder, formerly the Regional Health Authorities (RHAs) and now the Health Funding Authority (HFA), with a formal statement of the Crown's health objectives, and refers specifically to the "special needs of Maori". The Government's Maori health objectives were developed in 1992 and published in a discussion document, Whaia te Ora mo te Iwi. This focused on Maori health concerns and outlined the Government's thinking on policy directions for Maori health. Those directions (which have been retained throughout the reporting period) included:

(a) Greater Maori participation at all levels of the health sector;

(b) Resource allocation priorities which would take into account Maori health needs and perspectives;

(c) The development of culturally appropriate practices and procedures as integral requirements in the purchase and provision of services for Maori.

428. The major tenets of the discussion document were affirmed by the Government, and *Whaia te Ora mo te* Iwi was reframed as a policy statement and published under the same title in 1993. This document also confirmed the Government's medium-term objectives for Maori health:

> "Improvements are achieved in Maori health status so in the future Maori will have the same opportunity to enjoy at least the same level of health as non-Maori."

This objective is explicit acknowledgment of the need to address the significant health disparities between Maori and non-Maori. It remained a priority during the reporting period.

429. Similarly, as the structural and policy reforms in the health sector proceeded, the Strategic Direction for public health developed in 1993/94 by the Public Health Commission (para. 386 above) embodied a goal "to improve Maori health status so in future Maori will have the opportunity to enjoy at least the same level of health as non-Maori". A similar aim (one of only seven of the "public health goals") has been incorporated in the 1997 Strategic Direction (para. 386 above) which also has woven through it the elements of a more specific strategic plan for Maori public health: "He Matariki: A Strategic Plan for Maori Public Health: the Public Health Commission's Advice to the Minister of Health 1994-1995", which was devised following extensive consultation with Maori. In 1997, the Government's Medium-Term Strategy for Health and Disability Services (para. 386 above) reaffirms the same objectives. A detailed reading of the 1997 Strategic Direction with its Background Paper, and the Medium-Term Strategy (including its Introduction) will serve to show the degree of continued planning effort relevant to Maori. There is acknowledgment that the publicly funded health and disability sector must be responsive to Maori and continue to enable greater Maori participation at all levels of this sector.[77] Effective services for Maori are increasingly addressing the need for

culturally appropriate health delivery, among other access issues. Integrated primary care and preventive public health programmes are two important service areas as they generate significant health gains for Maori. The separation of funding for public health programmes has raised the profile and increasing effectiveness of these programmes. Improving Maori health therefore continues to be pursued at the policy, purchasing and delivery levels with positive results expected over the long term.

430. For years 1992-1997, some aspects of Maori health policy implementation in the above terms are summarized in a Ministry of Health paper, Some Aspects of Maori Health Policy Implementation over Five Years (attached among the supplementary materials). A very detailed account of the goals and measures taken regarding Maori health is available in Progress on Health Outcome Targets 1998. The distinctive blue side-banding in this document denotes pages which outline information on the progress of Maori health outcomes. Trends in health goals and objectives over the years 1992-1997 where comparable data is available are also outlined in the Progress report.

431. For previous relevant commentary regarding Maori health, refer to New Zealand's tenth and eleventh (consolidated) reports under the International Convention on the Elimination of All Forms of Racial Discrimination covering the period 1990-1993 (paras. 89-92), and to the material on Maori health in the third and fourth (consolidated) reports under the Convention on the Elimination of All Forms of Discrimination against Women (under article 12).

L. Decreasing long-standing disparities

432. It also has to be noted that the health status of Pacific Island people which has also been referred to (for example, in paras. 412 ff) is poorer than that of non-Pacific Island people, but generally occupies an intermediate position between Maori and non-Maori. Pacific Island people perceive their health status as having deteriorated because of their changing socio-economic patterns and the loss of their traditional ways of life. The current health status can be attributed to a number of factors, including the nature of the illnesses, lack of access to appropriate services, delay in seeking treatments and lack of follow-up and support to manage the illness or necessary treatment, the influence of cultural and religious issues, and additional difficulties often experienced by immigrant communities.[78] In 1997 hospitalization rates for infants under 1 year of age were 39 per cent higher than the national rate, while that for children aged 1-4 years was 28 per cent higher. The hospitalization rates for Pacific Island children presenting acute rheumatic fever, pneumonia and middle ear infections are well above the national rates.

433. As shown in the Introduction to the Medium-Term Strategy for Health and Disability Services (para. 386 above), the Government also seeks a significant improvement in the health status of Pacific Island people in New Zealand. The "public health goals" include one "to improve, promote and protect the health of Pacific people"; and as in the case of Maori, the 1997 Strategic Direction (para. 386 above) includes measures and goals to pursue good health for Pacific people.[79] In addition to this, the Ministry of Health identified key strategies for improving the health status of Pacific Island people.[80] In 1998 the Ministry established a Chief Adviser Pacific Health and identified the key areas for focus and development over the next three years (for example, sexual and reproductive health, women's health, health education and

promotion to address lifestyle illnesses (diabetes), primary care services that are delivered in a community setting that are accessible to people).[81] As to measures taken over the reporting period, and current objectives, reference can similarly be made to Progress on Health Outcome Targets 1998.[82]

434. Significant progress has been achieved in Pacific Islander health service development with the implementation of a Pacific Islander provider development programme in the 1998-1999 year, which provided opportunities for skill development at a governance and operational level. In addition to this, new service development in primary care, child health, disability support services and mental health has been under way. This will result in services being provided that are in most cases "Pacific" managed and delivered, and are able to improve access rates.

435. For previous relevant commentary regarding the health of New Zealand's Pacific Island populations, see the tenth and eleventh (consolidated) reports under the International Convention on the Elimination of All Forms of Racial Discrimination covering the period 1990-1993 (para. 94).

M. Further matters

436. Selected further matters bearing on New Zealand's implementation of Covenant article 12 are set out below under appropriate subject headings (a larger conspectus of health issues is available in Progress on Health Outcome Targets 1998). It will be seen that further information on the health status of groups already referred to (in particular Maori and Pacific Island people) is also given under some of these headings.

1. Measures taken for the health development of children

437. Information regarding infant mortality has been provided in paragraphs 412 ff above. As to children, the following comments can be made.

438. The former RHAs funded disease prevention and treatment services from a range of health care providers including health professionals and community groups. The HFA continues this process. Measures put into effect include a range of "well child" services such as parenting support, newborn screening, developmental vision and hearing screening for children aged 0-4 years, and immunization. Most services are provided by the HHS (Hospitals and Health Services), the Royal New Zealand Plunket Society, and Maori and Pacific Islander groups.

439. Child health was identified among the priorities set by the 1996 coalition Government and a national Child Care Strategy was devised and has been implemented since July 1998. This Strategy, the elements of which are described in Progress on Health Outcome Targets 1998,[83] drew together existing initiatives and provides leadership and direction to improve, promote and protect the health of New Zealand children. It includes a particular focus on priority groups of Maori children, Pacific Islander children, children with high health needs, and children from families at risk. Free health care for all children under 6 years of age was also implemented in 1997.

440. A number of government-funded initiatives to monitor and reduce particular childhood diseases have been introduced during the reporting period, including the following.

(a) Otitis media with effusion ("glue ear")

441. National Audiology Centre data on hearing loss incidence for the period July 1996 to June 1997 indicated a failure rate of failing screening tests for hearing at school entry is 13 per cent among Maori (13.5 per cent in 1995), 16.1 per cent among Pacific Island (15.7 per cent in 1995), and 6.4 per cent among other children.[84]

442. New school entrant failure rates showed a decreasing trend overall during the period 1991/1992-1994/95. The reduction is partly explained by more concentrated screening of 3-year-olds. As more children are identified earlier, they can be treated before they start school. The Maori and Pacific rates compare unfavourably with that of the total new entrant population. While there was a decrease for Maori in the period referred to above, Pacific Islander new entrants showed an increase.[85]

(b) Rheumatic fever

443. School aged children account for a large part of the total hospitalization rate where, for example, in 1994, children of 5 to 9 years were 24 per cent and those of 10 to 14 years were 36 per cent of the total hospitalizations. The age-specific rate for 5 to 14 years in 1994 was 20.2 per 100,000.

444. There are marked differences in the hospitalization rates for different ethnic groups. For those aged 5 to 14 years over the period 1988-1994, the average rate for Maori was 92.5 per 100,000; the rate for Pacific peoples was 96.6 per 100,000, and for non-Maori and non-Pacific people the rate was 4.4 per 100,000.[86]

(c) Child abuse[87]

445. The child homicide and assault rates have remained relatively constant. From 1990 to 1994 there were 51 deaths recorded for children aged 0-14 due to homicide and intentional injury by others, which represent 9.2 child deaths per annum. These deaths accounted for 3.2 per cent of all deaths of children in this age group.

446. Government protocols for dealing with family violence also apply to the Ministry of Health and steps are being taken to address this issue in health service delivery. Parenting education and support have been important components of "well child/tamariki ora" services purchased by the RHAs and now by the HFA. A number of programmes have been developed to support families most "at risk". The Ministry of Health is part of a major intersectoral initiative Strengthening Families, which is aimed at coordinating and promoting services for "at risk" or multi-problem families.[88]

(d) Mental health

447. In the early 1990s the level of child and youth mental health services available was such that access for all young people, including those with serious illnesses, was compromised. In many parts of New Zealand there were no services at all. Additional funding for child and youth services was made available in 1996 as part of the funding package given to mental health services following the Mason Inquiry (see para. 438 ff below).

(e) General

448. Further information - in summary form - on trends and objectives in child health is provided in Progress on Health Outcome Targets 1998.[89]

2. Young people: youth suicide

449. The aim of improving, promoting and protecting the health of young people is also among the seven established public health goals. Among the problems that have become apparent over the reporting period, that regarding youth suicide rates is of continuing public concern. As noted in paragraph 298 above, youth remain constantly over-represented in suicide statistics compared with all other age groups. New Zealand has one of the highest such rates in the world. In its consideration of New Zealand's initial report under the Convention on the Rights of the Child, the Committee on the Rights of the Child accordingly expressed in its concluding observations its "serious concern" in this respect.

450. A full review of and commentary on the incidence of youth suicide during the reporting period are available in Progress on Health Outcome Targets 1998, to which reference should be made.[90] In 1998 the Government issued a New Zealand Youth Suicide Prevention Strategy.[91]

451. The Government also continued funding research into child health and development (Christchurch and Dunedin Longitudinal Studies which have been funded since their inception 25 years ago) and funded a research programme which was being undertaken by the Christchurch Medical School Suicide Project. These studies have reinforced the view that early childhood disadvantage, family disharmony and disruption are heavily implicated in later poor mental health and suicide. The Government's response to these findings has been to fund projects like Healthy Start and Strengthening Families and Parents as First Teachers, along with specific Maori streams for these projects.

452. In 1999 a Ministerial Committee on Youth Suicide Prevention was established to ensure a total government approach to this problem. This Committee comprises seven government ministers and is supported by an Inter-Agency Committee on Youth Suicide. The purpose of these committees is to promote the timely, effective and efficient implementation of the Strategy across government agencies.

3. Women's health

453. For a report on women's health and health services for much of the reporting period, refer to New Zealand's third and fourth (consolidated) reports under the Convention on the Elimination of All Forms of Discrimination against Women, (under article 12).

454. It should be added that in the 1997 Strategic Direction for public health action and in the 1999 Medium-Term Strategy (para. 386 above) a separate public health goal is not designated for women. The health status of women is being provided for in the objectives pursued under more generalized goals affecting people (and families), including Maori and Pacific Islander populations. For the most recent period, detailed analyses of health trends and measures affecting women are available in Progress on Health Outcome Targets 1998, which should be consulted.

455. Examples of recent, new targeted initiatives to improve the health status of women are, notably, cervical screening and mammograph screening, as discussed below. Additional targeted initiatives to improve health rates are:

(a) Free contraceptive advice services (targeted to groups of women with high abortion rates);

(b) Increased subsidy for oral contraceptives so that, like other drugs, at least one is fully subsidized;

(c) Four different pilot public health programmes focusing on improving sexual and reproductive health services for Pacific peoples.

456. Cervical cancer is a largely preventable disease, and to reduce the incidence of, and mortality from invasive squamous cell cervical cancer, the Ministry of Health has made fully operational since 1992 a national Cervical Screening Programme which is nationally coordinated but managed and delivered at a local level. By the end of 1997, nearly 83 per cent of women between the ages of 20 and 70 were enrolled on the National Cervical Screening Register and had had a smear in the last five years. Priority groups for this programme are mid-life and older women, and Maori and Pacific Islander women. A decline in both incidence and mortality rates has accelerated since 1991, and is most likely due to improvements in cervical screening dating back to the mid-1980s. The data are explained, and expectations indicated in Progress on Health Outcome Targets 1998.[92]

457. Breast cancer is a significant health problem for women in New Zealand. It is the leading cause of cancer deaths among women, with 84 per cent of all breast cancer deaths occurring in women over the age of 50. International evidence shows that an organized population-based breast screening programme can reduce deaths from breast cancer in women aged 50-64 by between 25-35 per cent, as long as at least 70 per cent of eligible women are screened.

458. A National Breast Cancer Screening programme has been established and screening of eligible women started in 1998. Through early detection, the programme aims to reduce breast

cancer mortality by offering free mammography services at two-yearly intervals to women in the 50-64 age group who do not have symptoms of breast cancer. Assessment for women who develop symptoms is done by a team comprising radiographers, radiologists, breast specialist nurses, surgeons and pathologists.

459. In addition to the target group for the national programme, the following groups of women continue to have access to publicly funded mammograms:

(a) Women who have had breast cancer;

(b) Women 40-49 who have a strong family history of breast cancer (defined as a mother or sister with pre-menopausal or bilateral breast cancer);

(c) Women 40-49 who have had a breast histology demonstrating an at-risk lesion.

460. For data and expectations regarding breast cancer, refer to Progress on Health Outcome Targets 1998.[93]

4. Health services for the elderly

461. The growth in the population of New Zealanders over the age of 65 has prompted a review of the way in which the health system provides for this group. Historically, prior to the health reforms in the early 1990s, most of the funding for long-term services for older people had been spent on hospital and rest-home care. Latterly, the RHAs, and now the HFA, have moved towards greater emphasis on the provision of home support services to enable older people to remain in their own homes where this is appropriate. These services include more support for informal caregivers and more flexible arrangements for day care and respite care.

462. Older people remaining at home with the assistance of home support services are assessed on their weekly income and outgoings to determine eligibility for the level of government subsidy paid for the services they receive. Home support services are free to low-income people. Other services provided to older people include caregiver support services, equipment services and meals on wheels, and some of these services carry a part charge. Older people are income and asset tested to determine what, if any, monetary contribution they make towards the cost of their residential care outside their own home. In addition, during the reporting period no one contributed more than $636 per week towards the cost of such residential care.

463. One of the public health goals mentioned in paragraph 386 above is to improve, promote and protect the health of older people kaumatua. For current specific objectives in this regard, and for an assessment of progress in achieving targeted outcomes over the last five years, see Progress on Health Outcome Targets 1998.[94]

5. Mental health services

464. The changes in mental health services towards a community-based model of care which were referred to in New Zealand's initial report (paras. 540 ff) have continued during the reporting period. Traditional psychiatric hospitals have been downsized or closed, and more appropriate community-based and general hospital-based services have been developed in their place. In 1994 the Government acknowledged the need for an increased focus to mental health and released a strategic plan for the future development of mental health services in New Zealand (National Mental Health Strategy). Money has been provided since 1994 to begin to close the identified gaps. Between 1993/94 and 1999/2000, funding for mental health services in New Zealand increased about 100 per cent in real terms. Priority has been given to child and youth, Maori, and community-based services, as these have been where the gaps have been greatest.

465. Data on mental health during the reporting period has been insufficient to give a clear picture of the health status of the population. Admission rates for psychiatric illness remain proportionately greater in the Maori population than the non-Maori population; and as indicated in paragraph 449 ff above, recent figures indicate a higher than expected rate of youth suicide. Both of these areas are specifically addressed in the National Mental Health Strategy.

466. While Maori in particular are disproportionately over-represented in mental health services, Government has taken positive action to increase the provision of kaupapa Maori service options for Maori and to increase training opportunities so Maori can work in mental health. It has also dedicated specific funds to promote the development of new Maori service providers, and similar strategies have been put in place for Pacific Island peoples.

467. Since 1998, there has been significant development of services provided by Maori for Maori, and efforts have been made to improve mainstream services to make them more effective for Maori users. Another significant step in regard to Maori mental health was the Maori mental health plan, Kia Tu Kia Puawai, published by the HFA in 1999. This document includes a comprehensive appendix that lists the demographic characteristics and mental health issues of Maori by age cohort, and the priorities for Maori services in each locality.

468. Services for mentally disordered offenders have undergone dramatic development over the last five years. A national network of forensic psychiatric services based on six regional forensic services has been established. There has been a high input of resources, including purpose-built modern secure units, and a rapid development of training programmes in forensic psychiatry. Maori and Pacific Island consumers are considerably over-represented in forensic services, and development of services has focused particularly on providing services appropriate for the particular needs of these ethnic groups. The respective responsibilities of justice and health services have been defined. Health services are responsible for the care and treatment of those who offend and suffer from serious mental illness.

469. As foreshadowed in the initial report under the Covenant (para. 543), new legislation governing the compulsory assessment and treatment of those with mental disorder was introduced by means of the Mental Health (Compulsory Assessment and Treatment) Act 1992. The 1992 Act is described in (and a copy enclosed with) New Zealand's third periodic report under the International Covenant on Civil and Political Rights (paras. 49-51).[95]

470. Some issues still remain in relation to the interface between criminal law and mental health law. Relevant information and commentary are provided in New Zealand's fourth periodic report under the International Covenant on Civil and Political Rights (art. 9, paras. 88 ff).

6. Mental Health Commission

471. In 1998 the Government established the Mental Health Commission, an independent body charged with ensuring that the Government's overall strategy[96] is implemented. The Commission was established as a result of a recommendation made in a government-initiated review of mental health services. The Government was concerned about the provision of mental health services and the Mental Health Commission was set up as the Government's response to the report. The Commission is expected to hold the Ministry of Health, purchasers, providers and health professionals to account for improving services by implementing the strategy which confirms the change in direction from a hospital-based to a community-based service. The Commission reports directly to the Minister of Health and remains in existence for five years.

472. The Mental Health Commission set out a framework for the development of mental health services - Blueprint for Mental Health Services: How things need to be in 1998. The erstwhile Government had already committed additional resources to mental health and the current Government adopted the Blueprint as policy and committed further funding to assist in its implementation. This additional funding has been made available for the purchase of mental health services to address the following:

(a) Access to new anti-psychotic medications;

(b) Workforce development;

(c) Child and adolescent mental health services;

(d) More community services for adults;

(e) Community attitudes towards mental illness.

473. The Mental Health Commission and the Ministry of Health are closely involved in monitoring the expenditure of the additional funding, and the development of new and improved services. It must be noted, however, that one of the barriers to rapidly increasing services is the global shortage of psychiatrists and mental health nurses. The Government recognizes this concern and has increased its focus on workforce training and committed additional financial resources to training initiatives.

474. A copy of the Mental Health Commission's report covering the period July 1997 to June 1998 is supplied among the supplementary materials. This describes in more detail the role and activities of the Commission. Measures and consultations regarding Maori and Pacific Island people are among the topics dealt with.

7. Avoidable death and accidents

(a) Smoking

475. The cost of cigarette smoking to publicly funded personal health care has been estimated at $202 million per annum in 1992 dollars. New Zealand has one of the lowest levels of tobacco consumption in the OECD per person aged 15 years and over, and between 1980 and 1990 New Zealand had the largest decline in the OECD in the amount of tobacco available for consumption. However, an OECD comparison of rates of deaths attributable to smoking shows that New Zealand females face a higher risk of smoking-related deaths in their middle age compared to females of a similar age in most other OECD countries.

476. In 1996, one in four women smoked while pregnant, while one in two pregnant Maori women smoked. Smoking is higher among Maori mothers, single mothers, younger mothers and mothers with lower educational levels.

477. Consumption of tobacco products and smoking prevalence have continued to decline over the last five to six years, but the prevalence of youth and Maori smoking continues to be of concern. In 1997, the Smoke-Free Environments Act 1990 was amended to raise the age at which people may be sold tobacco from 16 to 18 years, to ban the sale of single cigarettes and small packets of tobacco, and to further restrict tobacco advertising in retail outlets. Other reduction strategies have also been introduced recently - for example a tobacco tax increase in May 1998, a national free telephone Quit-line, a multi-media Quit-programme, and a pilot cessation programme for Maori women.[97]

(b) Alcohol

478. Alcohol remains widely used within New Zealand society. Since 1980 total alcohol consumption per person has declined by 25 per cent, but may have reached a plateau in recent years. Most alcohol is consumed by men (77 per cent) and a quarter (25 per cent) is consumed by men aged 18-24 years. At some time in their lives, nearly one in five New Zealanders will suffer an alcohol-use disorder. Alcohol abuse also accounts for approximately 500 deaths each year. Apart from effects in relation to general health, alcohol is the main contributing factor to fatal motor vehicle crashes. In 1996, it contributed to 28 per cent of fatal crashes. This remains the subject of media-based information and awareness programmes by the Land Transport Safety Authority.

479. The Alcohol Advisory Council (ACC), the educational functions of which were described in New Zealand's initial report, is still funded at the rate of approximately $6 million per annum.[98]

(c) Unintentional injuries

480. In 1994, unintentional injuries still accounted for 4.2 per cent (down from 5 per cent in the previous review period) of all deaths in New Zealand and were the second largest cause of admission to hospital. The major causes of death in this category are motor vehicle traffic accidents (51 per cent), falls (20 per cent) and drowning (8 per cent). The Ministry of Transport and the ACC run periodic education and awareness programmes in the media in an effort to reduce injuries in these areas. Alcohol and speed are (first and second, respectively) the two major contributing factors to fatal road crashes.[99]

8. Environmental and industrial hygiene

(a) General

481. The Health Act 1956, the Food Act 1981, the Smoke-Free Environments Act 1990 and the Hazardous Substances and New Organisms Act 1996 now provide the general framework for regulating environmental hygiene.

482. The Government's commitment to the reform of the State sector has seen changes in the health sector affecting environmental health. The Government has established physical environmental health (primarily water, hazardous substances and food) as one of four priority areas for improvement.

483. Responsibility for the regulatory aspects of food administration (under the Food Act 1981 and the Food Hygiene Regulations referred to in paragraphs 341 ff above under article 11) and for environmental health protection, such as water, physical environment quality, noise control and sewerage, rests with the Ministry of Health.

484. Local authorities maintain their role in environmental health as outlined in the initial Report. This includes drinking water systems. Their Environmental Health Officers must be qualified under the Environmental Health Officers' Qualifications Regulations 1993.

485. The Resource Management Act 1991 (the emergence of which was foreshadowed in New Zealand's initial report under the Covenant (para. 485)) promotes the sustainable management of natural and physical resources. The Act is overseen by the Ministry for the Environment (New Zealand's initial report, para. 495). Regional councils have primary responsibility for the management of natural waters, soil, geothermal resources and pollution control. Territorial authorities have primary responsibility for land use management, through the issue of resource consents.

(b). Specific issues

(i) Public water supplies

486. These have been dealt with under paragraph 417 above.

(ii) Toxic material and waste management

487. A broad revision of legislation managing hazardous substances and new organisms occurred during the review period. The Hazardous Substances and New Organisms Act 1996 was passed with a view to both minimizing the risk from hazardous substances and new organisms while retaining their benefits, and improving the efficiency of the risk assessment procedures required to evaluate the impacts of such material.

488. Toxic substances used in New Zealand must be notified to the Ministry of Health under the Toxic Substances Act 1979. Importers of toxic substances must notify the Ministry of Health at the time of importation. The Ministry can then acquire a detailed report on the substance.

489. The Resource Management Act 1991 also provides a framework for a waste policy aimed at ensuring that, as far as practicable, New Zealand's waste generators should meet the costs of the waste they produce; and to encourage the implementation of the internationally recognized hierarchy of reduction, reuse, recycling, recovery and residual management by all involved in waste generation and management in New Zealand.

9. Privacy, ethics and consumer rights and protection in health care provision

490. As stated in paragraph 384 above, there has been important progress in the areas of privacy, ethics and consumer rights, and protection in health care provisions during the reporting period. The major legislative developments were the introduction of the Mental Health (Compulsory Assessment and Treatment) Act 1992, the Privacy Act 1993[100] and the Health Information Privacy Code issued thereunder (attached among the supplementary materials), the Human Rights Act 1993,[101] and the Health and Disability Commissioner Act 1994 and Code of Health and Disability Services Consumers' Rights issued thereunder (attached among the supplementary materials). While some of these pieces of legislation are not specific to the health sector, their overall trend is significantly to advance access to health and disability support services in New Zealand by the consumer.[102] The Health Information Privacy Code is issued and published by the Privacy Commissioner pursuant to Part VI of the Privacy Act; the Code of Health and Disability Services Consumers' Rights, pursuant to section 74 of the Health and Disability Commissioner Act, is issued and published as part of the New Zealand Statutory Regulations. In addition, the Privacy Commissioner produced for the Mental Health Commission a document (released in 1997) entitled Mental Health Professionals and Patient Information: Guidance Notes for Agencies in the Mental Health Sector. These Notes address the difficult and often controversial issues arising from the treatment of personal information in the mental health context.

10. Measures to maximize community participation in planning and so on of primary health care

491. The Strategic Direction already referred to (para. 386 above) was developed after extensive consultation with professional and community groups, including meetings (hui and fono respectively) with Maori and Pacific Island people. Consultation details are shown in the Strategic Direction and its accompanying Background Paper (above, para. 386). Continued public consultation is regarded as essential. It will be noted that the Values to Guide Public Health Action set out in the Strategic Direction[103] include Partnership, defined as meaning "the public, the health sector and other relevant sectors working together in the assessment of need, planning, implementation and evaluation of public health policies, programmes, research and information". Thus the Mental Health Commission, for example, has been undertaking extensive public consultations for some time. Details are available among the documentation provided above regarding the Commission's role and activities.

11. Measures taken to provide education concerning prevailing health problems and means of preventing and controlling them

492. The Progress on Health Outcome Targets of the Ministry of Health includes detailed information on educational and other public promotional measures in the Strategies section under the various Individual Target Reports.[104]

Article 13 - The right to education

A. Summary of key developments

493. This section of the report contains the following key developments:

(a) A major revision of the education curriculum at the primary and secondary levels;

(b) Increasing attention to the needs of specific groups;

(c) Changes in funding arrangements for tertiary student subsidies.

B. Previous reporting

494. For the present reporting period, attention is drawn to:

(a) New Zealand's initial report under the Convention on the Rights of the Child (paras. 116-122) and the second report under the Convention on the Rights of the Child recently submitted;

(b) The third and fourth (consolidated) reports under the Convention on the Elimination of All Forms of Discrimination against Women (in respect of article 10 thereof);

(c) The tenth and eleventh (consolidated) reports under the International Convention on the Elimination of All Forms of Racial Discrimination (paras. 67-82 and 159-165);

(d) The observations regarding education in New Zealand's introductory statement made in 1993 at the time of presentation of the initial report on the present Covenant (see para. 44 above).

C. Measures to promote the full realization of the right of everyone to education

495. In general, it can be said that in New Zealand the preservation and enhancement of the right to education are evidenced by the fact that, despite a period of economic constraint, net expenditure on education has followed an upward trend during the reporting period, as the table provided in paragraph 533 below indicate. This financial provision currently allows the education system to include support for a wide variety of early childhood services; up to 14 years of schooling; the provision of tertiary education through universities, polytechnics, colleges of education, wananga[105] and private training establishments; and various transition education, community education, adult education, non-formal education and distance education opportunities.

D. Curriculum

1. General

496. A programme of reform of the curriculum was begun in 1990 building on reviews and developments undertaken in the late 1980s. The New Zealand Curriculum Framework and a series of seven national curriculum statements, now provide the basis for programmes in schools. Both the Framework document and the national curriculum statements have been developed in English for mainstream education and in te reo Maori (the Maori language) for those students who are involved in Maori immersion education.

497. The curriculum developments had regard to the background already outlined as follows to the Committee in 1993:[106]

> "The need to realign the education system with the changing economy has been recognized. In the past the education system was consistent with and reflected an economy with a comparatively high demand for low-skill employees. There were few incentives for young people to participate in higher education and training as the system was based on a narrow range of pathways with access to higher education largely confined to an academic elite. This situation was compounded by almost full employment and compressed margins for skills. This discouraged the development of widespread vocational education. The moves to a competitive economy, and increased unemployment, have required change in the education system to cater to an economy which demands higher level skills."

2. The New Zealand Curriculum Framework

498. The New Zealand Curriculum Framework, published in 1993, describes the broad elements which are fundamental to learning and teaching in New Zealand schools. It sets out the principles which underpin and give direction to all teaching and learning in New Zealand schools. The principles state that the curriculum will:

(a) Be broad, balanced and common;

(b) Be inclusive of all students;

(c) Foster success and achievement for all students;

(d) Enable students to become independent and lifelong learners;

(e) Ensure that learning progresses coherently throughout schooling;

(f) Recognize New Zealand's bicultural identity;

(g) Reflect the multicultural nature of New Zealand society;

(h) Be cooperatively designed;

(i) Relate to the wider world.

499. The Framework specifies seven essential learning areas which describe in broad terms the knowledge and understandings which all students will acquire:

(a) Language and languages/te korero me nga reo;

(b) Mathematics/pangarau;

(c) Science/putaiao;

(d) Technology/hangarau;

(e) Social sciences/tikanga-a-iwi;

(f) The arts/nga toi;

(g) Health and physical wellbeing/hauora.

500. The Framework also sets out the essential skills to be developed by all students in the essential learning areas. These skills are grouped under the following categories:

(a) Communication;

(b) Numeracy;

(c) Information;

(d) Problem-solving;

(e) Self-management and competitive;

(f) Social and cooperative;

(g) Physical;

(h) Work and study.

501. The Framework outlines the desirable attitudes and values which should form part of every student's learning. It also outlines the policy for assessment at school and national levels. It will be apparent that emphasis is accorded, in the Framework principles, to the need to reflect both New Zealand's bicultural identity in terms of the Treaty of Waitangi, and the multicultural nature of New Zealand society.

3. The curriculum statements

502. The Framework provides direction to the development of the more specific national curriculum statements. These documents spell out in more detail the required learning described in the framework document. Six of the seven national curriculum statements have been distributed during the reporting period to schools, for mathematics, science, English, technology, social studies and health and physical education. A statement for The Arts has been issued in draft form. In addition curriculum statements have also been developed for optional language subjects: Chinese, Spanish, Samoan and Japanese; and science subjects: biology, chemistry and physics. National curriculum statements in te reo Maori (Maori language), pangarau (Mathematics), putaiao (Science) and hangarau (technology) have been published and distributed to schools where students learn through the medium of the Maori language. Statements for tikanga a Iwi (social studies), nga toi (The Arts) and hauora (health and physical education) are under development.

4. The primary, intermediate and junior secondary school curriculum (years 1-10)

503. All State and integrated schools are required to provide a broad and balanced curriculum to all students throughout years 1-10 (junior classes to end of form 4) in accordance with The New Zealand Curriculum Framework and the seven national curriculum statements. The detail of the programmes and the particular emphasis given to different areas of learning are determined at the school level.

5. The senior secondary school curriculum (years 11-13)

504. In years 11-13 students begin to select the subjects they will study to gain qualifications. They may continue with a broad general education or begin to study more specialized school subjects (e.g. biology, chemistry, physics instead of general science; history, geography, economics instead of social studies). They may also take up studies of a more vocational nature.

E. National Qualifications Framework

505. Also of note is the fact that the new curriculum - in its various forms - is tied in with the development of the National Qualifications Framework developed since 1991 by the New Zealand Qualifications Authority. The latter is a Crown entity established under the

Education Act 1989. The object of the Authority is to promote improvement in the quality of education in New Zealand through the creation and maintenance of a comprehensive, accessible and flexible National Qualifications Framework. In essence, the Framework is a means by which national qualifications have a high credibility both throughout New Zealand and overseas, and are related to each other in ways that assist people to upgrade their qualifications without having to repeat unnecessarily previous study and assessment. The Framework brings together senior secondary education, industry training and tertiary education into one coordinated qualification system. It is based on unit standards against which students are assessed. By meeting these standards, students gain credit towards national qualifications, regardless of where they are studying. Further information is given under paragraphs 507 ff below.

F. Priorities

506. During the reporting period, the New Zealand Government gave priority to three aspects of curriculum and achievement:

(a) The Literacy and Numeracy Goal. In September 1998 the Government set a goal that "by 2005, every child turning nine will be able to read, write and do maths for success". Although most New Zealand children do well at reading, writing and mathematics, there is concern about the wide gap between the lowest and highest levels of achievement and about significant differences in performance between particular groups of children. A literacy and numeracy strategy is under way to address these issues, involving expert and practitioner task groups and a major public/community awareness-raising and information campaign;

(b) Interactive education - an Information and Communications Technologies (ICT) Strategy for Schools. Launched in October 1998, the Strategy's aims include that by 2002 New Zealand schools will be demonstrating that they are improving learning outcomes for students by using ICT, and developing partnerships with their communities to enhance access to learning through ICT;

(c) Maori Education Strategy. In July 1999 the Government announced details of a multifaceted strategy designed to raise standards of achievement of Maori students in mainstream, bilingual and immersion settings. As part of the strategy all schools will be required to develop and demonstrate policies, plans and targets for improving Maori education, and to report annually against these plans and targets. The Maori Education Strategy was developed following widespread national consultation with Maori (see para. 516 below).

G. National qualifications at secondary schools now and in the future

507. Under the present system, secondary school students may enter for the following awards:

(a) School Certificate - generally attempted in year 11;

(b) Sixth Form Certificate - year 12;

(c) University Entrance and Bursaries - year 13.

508. Alongside the above awards there are a number of National Qualifications Framework (NQF) National Certificates which are gained through credit accumulation. Credits are awarded at different levels on the NQF through assessment against unit standards. There are very many unit standards registered on the NQF in academic as well as vocational subjects.

H. Needs of specific groups

509. In its concluding observations on New Zealand's initial report, the Committee noted with concern that Maori and Pacific Islands people "continue to figure disproportionately in relation to ... poor educational qualifications" (para. 14). The Committee urged New Zealand to collect and publish relevant statistics and to provide that information to the Committee in the present report (para. 21).

510. In response to this request, relevant information as to the groups mentioned is given under the headings relating to Maori, and Pacific Islands people (see paras. 511 ff and 518 ff, respectively below). Basic statistics as to the same groups are also available from the 1996 census in New Zealand. The following tables from that census are attached as annex 20:[107]

(a) Ethnic group and sex by highest qualification;

(b) Ethnic group, age group and sex by highest school qualification;

(c) Broad field of study for first post-school qualification listed by ethnic group and sex;

(d) Ethnic group and sex by study/training course attendance.

1. Maori

511. As already indicated in the tenth and eleventh (consolidated) reports under the International Convention on the Elimination of All Forms of Racial Discrimination, while equality of educational opportunity exists in the New Zealand education system, Maori students (who now constitute 20.1 per cent of New Zealand's school students) are not receiving the full benefits of this in comparison with non-Maori students. Maori students have lower rates of retention to post-compulsory education, and are much more likely than other students to leave school with few formal qualifications. Although important gains have been made in the participation rates of Maori students since the mid-1980s in post-compulsory secondary education, increases for the rest of the population have been accompanied by little net improvement, and in some cases a deterioration, in the relative position of Maori. Thus the 1996 census results indicated that "forty-five per cent of Maori aged 15 years and over held formal educational qualifications at the 1996 Census, the same proportion as the 1991 Census".[108]

512. Maori students who do not participate in post-compulsory schooling are less likely to enter into the formal qualification process, tend to present fewer subjects for assessment, and on average are awarded lower grades than their non-Maori peers. As at 1997, 37.7 per cent of

Maori students still leave school with no qualification compared with 13.1 per cent for other students. Towards the beginning of the reporting period, these figures were - for 1992 - 37.2 and 12.4 respectively.

513. While gains remain hard to achieve, there has during the reporting period been a considerable concentration of attention - principally through the Ministry of Education with the assistance of Te Puni Kokiri (Ministry of Maori Development) - on improving Maori education. In the last decade, early-stage Maori language learning and later Maori-medium education have been the prime initiative, providing more appropriate learning environments for Maori, and improving participation and confidence in the learning process. In other respects the educational system has already been securing some worthwhile results, particularly in sizeable increases in the number of Maori enrolled in tertiary education in recent years. In primary/secondary education, the number of Maori teachers has gone from 6 per cent in 1990 to 8.3 per cent in 1998, but this percentage needs to be still further increased.

514. The Ministry of Education supports a range of schemes to improve early childhood and post-compulsory education participation rates, to raise the levels of educational achievement, and to help retain te reo Maori (Maori language). These include: Kura Kaupapa Maori (Maori language immersion State schools); wananga (see para. 495, note 105); Maori language immersion courses for practising teachers and professional development programmes to aid the introduction of the New Zealand Curriculum in Maori; Te Kohanga Reo ("language nests" or total Maori language immersion early childhood centres); Training of Maori staff for Te Kohanga Reo; Parents as First Teachers Programmes (PAFT) targeted at Maori parents; research into Maori educational achievement; language learning resources; and training of Maori teachers. A Skill Pathways and a Maori Vocational Training Programme are also designed to increase Maori participation in post-school and post-compulsory training/retraining and education.

515. The new focus on Maori education by the end of the reporting period is exemplified by the Ministry of Education's comprehensive Annual Report on Maori Education 1996/1997 (attached among the supplementary materials). A succinct statement of the stage then reached in such education is set out in the Annual Report.[109] Attention is also drawn to the Statistical Profile of Maori Participation and Achievement in Education provided in the Annual Report, the data in which cover most of the reporting period.[110] Updated assessments and information are given in the more recent Annual Report for 1997/1998 (attached among the supplementary materials). Ongoing intentions and directions in Maori education are set out in detail in the report.[111]

516. In 1999 the Government approved the implementation of a more strategic approach by means of the Maori Education Strategy. This was informed by national consultation with Maori and seeks to take account of concerns raised by Maori over many years.[112] The aim of the Strategy is to lift Maori achievement and eliminate educational disparities between Maori and non-Maori. The Strategy has three key objectives:

(a) To lift the responsiveness of the mainstream of education to Maori;

(b) To increase the level of Maori responsibility and authority in education; and

(c) To develop quality in Maori medium education.

The Maori Education Strategy links closely to the Government's Maori Language Strategy (see under article 15 (paras. 616 ff below)) through a Maori Language Education Plan which is the Government's main vehicle for developing a quality Maori medium education system.

517. It should also be noted that the new National Qualifications Framework described in paragraphs 507 ff above allows for the formal recognition of the traditional knowledge of the Maori. Maori experts are involved in the development by the Authority of unit standards in fields of practice such as te reo Maori (Maori language) and tikanga (customs and practices). Maori experts are also involved in the development of unit standards providing a Maori dimension to general subjects such as business and management, and film and electronic media.

2. Pacific Island people

518. During the reporting period, concern over the level of Pacific Island people's educational achievement prompted the Ministry of Education to issue a new overall plan: Ko e Ako 'a e Kakai Pasifika (Pacific Island People's Education in Aotearoa New Zealand: Towards the Twenty-first Century), launched in December 1996. The new plan discusses ideal educational outcomes and sets specific goals in areas such as early childhood services and tertiary education.

519. In 1995 only 33 per cent of Pacific Island students received A, B or C School Certificate passes, compared with the average 63 per cent pass rate of other students. Pacific Island students are also less likely to go on to further education. In 1997, only 33 per cent of Pacific Island school-leavers went on to further education and training, compared to 50 per cent of all school-leavers.[113] It must be taken into account, however, that the number of Pacific Island students has increased by more than 16 per cent over the last five years, twice the overall rate of increase of the school population. Pacific Island students now constitute 7.4 per cent of the New Zealand school population.

520. Ko e Ako 'a e Kakai Pasifika cited some possible causes for Pacific Islanders' under-achievement. Amongst them are difficulties some teachers have in coping with different learning styles, differing levels of expectation, and the fact that some students are required to work after school to supplement the family income. In other instances, families may not understand what students need in order to succeed, for example, a quiet place to study. Underlying the situation are two opposing cultural approaches to education. In Pacific Island communities, teachers are greatly respected and many parents do not consider it appropriate to question a teacher's judgement. This leads to parents adopting a "hands-off" approach to their child's education. There is also an historical tradition of very conventional rote-type learning. Both these traditions can disadvantage students who find it difficult to ask questions and take part in an interactive learning environment. In some cases teachers have limited strategies in place to address these issues.

521. Ko e Ako 'a e Kakai Pasifika identified the main keys to improving Pacific Islanders' educational achievement as "high quality Pacific Island early childhood services, effective

school programme; and success in tertiary education". Goals include increasing the number of Pacific Island teachers at all levels; increasing Pacific Island membership on school boards of trustees (providing appropriate training if necessary); commissioning research supporting Pacific Island education (including bilingual education); and increasing the variety of learning materials developed for Pacific Island students. Further to the latter aims, a draft curriculum statement in Samoan was released in September 1994 - the first national statement to be developed for this language spanning both early childhood and schools. The formal Samoan curriculum statement, Ta'iala mo le Gagana Samoa, Samoan in the New Zealand Curriculum, has since been released and has been implemented in a number of primary and secondary schools. In 1999 Samoan language is available as a School Certificate subject. The Ministry of Education continues to support the Samoan language curriculum by developing learning resources and funding professional development of Samoan language teachers. While this language was the initial focus of attention (given that Samoan students now form 50 per cent of the total Pacific Island student population) the Ministry of Education has been active in developing materials for teachers and students in other Pacific Island languages including Niuean, Tokelauan and Tongan. The terms of reference for developing the Cook Islands language are currently being finalized.

522. Ko e Ako 'a e Kakai Pasifika also endorsed education schemes already in operation. Among these are projects like the Pacific Island Education Resource Centre based in Auckland, which opened in 1976. In 1996 it received $873,000 in funding from the Government through the Ministry of Education. Other education schemes include Anau Ako Pasifika, a home-based parent support programme in which Pacific Island women visit families in their homes. The project began as a community initiative in 1988 and has recently started to receive Government funding. Community activity has also fuelled a dramatic rise in Pacific Island early childhood services. Early childhood development (ECD) supports developing Pacific Island early childhood groups financially, as well as by giving advice and guidance. Further funds have been allocated by the Pacific Island employment strategy, Vaka 'Ou, which has been distributing funding of $3 million over a three-year period beginning July 1996. Vaka 'Ou funding for education projects has been channelled through the Ministry of Education. Vaka 'Ou funding has now ended and the Government has allocated ongoing funding to three projects originally funded under Vaka 'Ou - Licensing Project, Pacific Island School Parent Community Liaison Project and Anau Ako Pacifika.

523. A *Report on* Ko e Ako 'a e Kakai Pasifika was released in November 1998, reviewing implementation of the plan over the previous 18 months. As this provides updated background information on Pacific Island education, the report is included among the supplementary materials. The plan itself is currently under review. In 1998 fono (meetings) were held with Pacific Island education stakeholders to discuss the implementation of the plan, explain projects and discuss their impact on Pacific Island peoples in education, and gain reaction to the report. The plan has continued to help raise awareness and prioritize Pacific Island education within schools, and among parents and communities. It will continue to be refined, revised and adapted to reflect Pacific Island peoples' changing education needs.

524. Ko e Ako 'a e Kakai Pasifika contains extensive specific data covering the reporting period and its conclusion, including tables of Pacific Island early childhood enrolments by

age 1990-1997; Number of Pacific Island school students 1992-1997; highest secondary school attainments 1991 and 1997; and Tertiary enrolments, types of attendance, and University achievements 1997. Some of these tables are disaggregated by sex.

525. As to primary and secondary schooling, brief updated information about Pacific Island students (and particularly as to the composition of this student population and its locations in New Zealand) is also available in the Ministry of Education's general report, New Zealand Schools (attached among the supplementary materials).[114]

I. Statistics on school drop-out rates

526. In its concluding observations on New Zealand's initial report under the Covenant, the Committee requested "statistics on school drop-out rates disaggregated according to race" (para. 21). While it is difficult to settle on a robust definition of school drop outs, it is assumed for the purposes of this present report that the focus is on the percentage of students retained in the non-compulsory years of schooling. It should be borne in mind, however, that many students leave the school system to undertake further education and training, including traineeships under the Industry Training Act (para. 586 below). The following figure illustrates the proportion of students enrolled at schools, as at July 1998:

	16-year-olds	17-year-olds	18-year-olds
Maori	71.0%	41.6%	11.6%
Pacific Islanders	82.2%	64.4%	23.8%
All groups	86.0%	62.1%	16.1%

527. As to truancy and other initiatives, reference should also be made to paragraph 579 below.

J. Female students

528. As indicated in the third and fourth (consolidated) reports under the Convention on the Elimination of All Forms of Discrimination against Women (under article 10) "since 1992, there has been a gradual improvement in the position of women and girls within the education system". Statistics, published during the reporting period, show that girls are more likely now than in the past to remain in school to senior levels. They tend to leave school more highly qualified than their male counterparts. More women are participating in post-compulsory education and training, and the number of women enrolling at universities is now higher than that of men. But this success is undermined by girls' continuing predominance in traditional subjects and lesser involvement in graduate studies. Their achievements are frequently not translated into high status and higher-income occupational choices. The situation for Maori women gives considerable cause for concern. They are more likely than non-Maori women to leave school at an early age and to have no qualifications; and the qualifications they do receive are likely to be locally rather then nationally based. During the reporting period, a pilot project, Te Iho Kohine, to protect the essence, or pith (te iho), of girls and young women (kohine) as positive, powerful and whole was developed by the Ministry of Women's Affairs. Te Iho Kohine grew from research that identified barriers experienced by Maori girls, impeding their academic achievement as a result of low self-esteem and expectations.

529. For statistical data as to female educational attainment in general, see paragraphs 589 and 590 below. Statistical data as to the position of Maori female students is available in the tables there provided and in the Ministry of Education's Annual Reports 1996/1997 and 1997/1998 (attached among the supplementary materials). The specific performance of Pacific Island female students is discussed in the *Report on* Ko e Ako 'a e Kakai Pasifika (attached among the supplementary materials).

530. Gender equity as such is addressed in New Zealand as part of the Government's commitment to ensuring equality of educational opportunity for all students. In the 1993/94 year the Ministry of Education placed special focus on issues for Maori girls and women, and a gender-inclusive curriculum.

531. In the more general context of females in schools, a resource, Preventing Sexual Harassment in Schools, was produced during the reporting period by the Human Rights Commission and is aimed at both students and staff. It was given priority for action in response to a reported increase in the number of complaints received from schools by the Human Rights Commission, particularly from female secondary students about to enter the workforce. The resource was distributed to all secondary schools in mid 1996 and is also available to primary schools upon request. The Ministry of Education subsequently funded the development of a training module to support the implementation of this resource. The training module, jointly funded by the Ministry and the Human Rights Commission, was delivered nationally to schools in late 1996.

532. Equal employment opportunities (EEO) training and support services encourage boards of trustees, in their roles as employers, to consider equity issues related to the employment of staff in schools. EEO provides a useful tool to assist employers in the education service appoint good quality teaching staff representative of their student population.

K. Expenditure on education

533. The percentage of the national budget spent on education is shown in annex 21.[115] The percentage has increased from 15.7 per cent in 1990 at the beginning of the present reporting period to 16.2 per cent in 1997.

534. Information contained in Education at a Glance: OECD Indicators 1996 Edition (1996), placed New Zealand in the top third of OECD countries, or around the OECD average, for most indicators. In 1993, for example, New Zealand's proportion of GDP spent on education was above the 1993 OECD average of 5.3 per cent.

L. School system

535 The structure of the compulsory schools system in its present form is outlined in New Zealand Schools 98.[116]

1. Number and type of schools and other educational institutions; student numbers

536. A general conspectus of this subject can be obtained from annex 22 which, sets out (extracted from the New Zealand Official Yearbook 1998) tables of the number of educational institutions, of students enrolled, and of equivalent full-time teaching staff for the years 1995-1997. This annex covers tertiary institutions as well as primary and secondary ones. For schools as such, reference should be made to New Zealand Schools 98[117] which contains more specific comparative data as to schools by number and type for 1988 and 1994-1998 and staffing for 1993-1998. Information is also provided as to number of students by school type 1988 and 1994-1998, and analysing student numbers by age, gender and ethnicity, as at 1 July 1998.

537. Two notable features of the New Zealand school system are the relatively large numbers of schools per capita, and the high number of schools in rural localities (with one third of State schools being in such localities).[118]

538. Over the reporting period, there has been some decrease in the numbers of some types of school. For example, while the number of secondary schools increased from 335 in 1994 to 337 in 1997 and the number of composite schools (catering for students from year 1 to year 15) increased from 91 to 94, the total number of primary schools (including intermediate schools, integrated schools and private schools) decreased from 2,326 to 2,293 in the same period. Within these figures, the number of private (non-integrated) primary schools decreased from 73 to 58 due to the further integration of private schools into the State education system. In some instances the reduction in the number of State primary schools can be attributed to the closure of schools where rolls have fallen below nine pupils.

539. In this and related contexts, a policy requiring mention is the Educational Development Initiative (EDI) inaugurated in 1991. As population patterns change, this policy allows a community (in terms of school boards and parents) to analyse the present form of education provision and delivery and to decide whether better, more efficient forms would be preferable. Most of the completed projects under the policy have involved rural communities agreeing to combine school resources. Typically, these may involve two primary schools coming together to form one school, or a primary and a secondary or intermediate school amalgamating to form a new area school.

540. Ongoing planning is taking account of increasing school rolls.[119] Thus provision of "$180 million to build a planned 460 new classrooms (361 in primary schools and 99 in secondary schools)" has been made to cope with increased rolls in the 1999 school year.[120]

2. Diversity of schools

541. In relation to New Zealand's initial report, the Committee inquired about the high percentage (then 90 per cent) of private schools controlled by Roman Catholic education

authorities, and about the meaning of integration of such schools into the State system of education. Relevant information was given in response. The following update on this subject may now be of interest:[121]

> "Over the last 10 years, New Zealand has seen an increasing diversity of schools, offering a wider choice to students and parents. A significant network of schools affiliated to the Roman Catholic church provides choice for parents and students, and in recent years other groups have been increasingly involved in the provision of education. In 1998 there were 192 private and integrated schools not affiliated to the Catholic church, up from 130 schools in 1988. In the State school network the change has been even more dramatic, with integration providing a mechanism for increasing the choice of State schools available. In 1988 there were only nine integrated schools which were not Catholic schools, but by 1998 nearly a quarter of integrated schools were not Catholic schools. In addition to the 236 integrated Roman Catholic schools there were 76 integrated schools representing a diversity from Seventh Day Adventist schools, Muslim schools and Jewish schools, to Rudolf Steiner and Montessori schools.
>
> "Further diversity of schooling choice is provided in certain areas by 59 kura kaupapa Maori, State schools in which Maori language, culture and values predominate. Many other schools offer a choice of curriculum delivery through the medium of Maori language, at various levels of language immersion."

542. Further commentary on integrated and private schools, and data on the comparative numbers of State-integrated and private schools over the period 1988 to 1998, are provided in New Zealand Schools 98.[122]

3. Primary and secondary education: free and compulsory aspects

543. The following statement in New Zealand's initial report under the Convention on the Rights of the Child (para. 277) remains valid except that, as explained further below, the reference to "all New Zealand citizens" should more properly read "all New Zealand citizens and other persons classified as domestic students":

> "Under section 3 of the Education Act 1989, all New Zealand citizens are entitled to free primary (and secondary) education in a State school between the ages of 5 and 19.... Schools ask students to pay a specific amount as a 'school fee' to assist with the costs of the school activities and materials. Payment of this 'fee' is voluntary. Education is compulsory between the ages of 6 and 16 years. However, most children start attending primary school from the age of 5 years."

544. As indicated in paragraph 257 of the present report, the period for compulsory education was raised from 15 to 16 years during the reporting period, by the Education Amendment Act 1991.

545. It also remains the case that, in general, primary or secondary education is required to be paid for by students from abroad who are given admission to New Zealand for the particular purpose of education and on the basis that they will pay for it.[123] The following information furnished in 1993 to the Committee on Economic, Social and Cultural Rights, in response to its written question 45, represents the current position:

> "Since the completion of the initial report, the Education Act 1989 has been amended in a number of respects, including with regard to the definition of and regime applicable to 'foreign students'. A 'foreign student' is now defined simply as being a student who is not a domestic student. A 'domestic student' is defined as being a New Zealand citizen, or a holder of a residence permit[124] under the Immigration Act, or a person exempt from the requirement to hold a permit under that Act,[125] or a person who is a member of a class or description of person required by the Minister of Education to be treated as if they are not foreign students. 'Foreign students' will usually be students who apply for, and are granted a visa to enter New Zealand, on the basis that they are purchasing education. All domestic students - which includes refugee students granted a permit under the Immigration Act - are entitled to free primary and secondary education."

546. It should be added that the persons referred to above who are members of a class or description required to be treated as if they are not foreign students have been defined by the Minister, pursuant to the Education Act 1989, by New Zealand Gazette notices issued during the reporting period - first in 1992 and then in a 1998 revision. The persons concerned include principally foreign students studying in New Zealand under an exchange programme approved by the New Zealand Government, and foreign students who are dependent children of any person who is the holder of an unexpired work permit granted under the Immigration Act 1987.

4. Primary and secondary education: general, and measures to make such education available to all

547. The fundamental rights to secondary and primary education remain as outlined in New Zealand's initial report. A number of the developments which have occurred during the review period do, however, impact on both sectors, and are considered among the matters referred to below (except for those already covered under other headings above).

(a) Learning by correspondence

548. The Correspondence School referred to in the initial report (paras. 601, 619) continues to be an important part of the New Zealand educational scene, as it has been since 1922. The total school roll of 19,790 at 1 July 1997 was made up of 810 early childhood, 208 special needs full-time, 1,239 other primary, 7,977 other secondary, 1,342 full-time primary, 2,574 full-time secondary, 5,640 adult. The staff of 486 included 23 early childhood teachers, 82 primary teachers, 255 secondary teachers, 12 regional representatives, and 114 administrative staff.[126]

549. From the 1940s, secondary-age students from face-to-face schools have been able to use the Correspondence School to take courses not available in their own schools. Currently, over 98 per cent of New Zealand secondary schools use the Correspondence School's Open

Learning Service to allow their students to take courses across the curriculum. The service is used by secondary schools when they lose a specialist teacher, have staff shortages or cannot provide a full range of subjects.

550. The marked increase in adult usage of the school reflects the fact that the school's Adult Open Learning Service offers second-chance learning opportunities for thousands of New Zealand adults. Some are fulfilling a lifelong ambition to improve their academic qualifications, others want to gain qualifications to improve their employment opportunities. The courses are also very popular with recent school leavers who have jobs but wish to study further.

551. During 1997, the school's Early Childhood Service began to offer dual enrolments to students in isolated areas who had limited access to face-to-face early childhood services. The service was established in 1976 to ensure that children under five who were unable to attend a face-to-face childhood centre received early childhood education. Support is given to parents to help them work with their pre-schoolers to develop the skills they will need in primary school. For children, even babies, with special needs, the school works with parents to help them help their child to develop its skills and potential.

(b) Teachers' conditions

552. Employment contracts are negotiated between the Ministry of Education and the bargaining agent or unions representing the teachers. These cover the employment arrangements of the large majority of teachers although some are covered by individual employment contracts, negotiated with the school and individual but requiring Ministry agreement. The major statutes governing these processes during the reporting period were the State Sector Act 1988 and the Employment Contracts Act 1991. The result of most negotiations at the end of the reporting period has been the establishment of a Unified Pay System, or common wage rates, across the primary and secondary sectors.

553. Staff in early childhood centres have their employment conditions set by direct negotiation, either individual or via their union or bargaining agent, with their employer. A similar situation occurs with teaching staff in the tertiary sector.

(c) Professional development for teachers

554. Boards of trustees are able to use part of their operations grant for the professional development of teachers. Thus, boards can purchase in-school teacher training or development, attendance at in-service courses, or subsidize the cost of tertiary or other relevant study.

555. The implementation of the extensive changes to the New Zealand school curriculum (described in paras. 498 ff above) places demands upon teacher training. The Ministry of Education has made funding available to support the implementation of new curricula through teacher development opportunities. For 1999/2000 funding of approximately $43 million per annum is available through government contracts to supplement the professional training of teachers to achieve the curriculum. As a result of a Teacher Education White Paper policy

decision, however, this system will change in that about $20 million will be retained for central allocation and the balance will be allocated to schools through their operational funding to facilitate local decision-making on professional development.

(d) Technical and vocational secondary education

556. As noted in New Zealand's initial report under the Covenant (para. 622), vocational education and training have largely been transferred from the secondary to the post-compulsory education sector. The programmes and initiatives developed at the senior school level to assist students with the transition from school to work now include the following.

(a) School-Industry Links were, until recently, facilitated by the Careers Service. In 1999 the Ministry of Education revised a Working Together, building partnerships between schools and enterprises document to clarify ways in which schools might achieve effective enterprise partnerships in order to enhance school teaching and learning. The Government has set aside an additional $1 million over three years for enterprises to establish or extend regional partnerships with schools;

(b) The Secondary Tertiary Alignment Resource (STAR) provides $24.56 million to schools to assist senior students in years 11-13 towards study leading to a national qualification at a tertiary level. Funding is approved and disbursed by the Ministry of Education. About 50,000 students (approximately one-third of students in the senior secondary school) attend a course at a tertiary level every year. STAR first became operational in 1996.

557. In addition to these government initiatives, there are a number of private initiatives that bridge the gap between secondary school and work, and secondary school and tertiary education.

M. Access to higher education

1. General

558. In terms of a systemic approach, higher education in New Zealand has during the review period been subsumed within a broader category of Post-Compulsory Education and Training (PCET). In the PCET sector, the Government has focused on making the provision of education and training more responsive to the demands of learners (and the demands of the labour market and economy), on more efficient allocation and use of resources, on providing more choice and diverse options, and on improving access for all New Zealanders. An overriding concern has been to ensure that the PCET system provides a highly qualified and flexible workforce necessary for an internationally competitive economy. This theme has already been adverted to in connection with the New Zealand Curriculum Framework (para. 498 above).

559. During the reporting period, participation trends in post-compulsory education have increased markedly, as may be seen from the difference between the 1990 and 1997 levels set out in the table in annex 23 (extracted from the New Zealand Official Yearbook 1998). Until the mid-1980s New Zealand had comparatively low levels of participation in secondary school beyond the compulsory ages in comparison with countries which are our trading partners. Substantial progress has been made over the reporting period. For example, the percentage of

students retained to form 6 has increased from 66.5 per cent in 1985 to 83 per cent in 1996 and 1997. The percentage of students retained to age 17 years has increased from 30.8 per cent in 1985, to 60.1 per cent in 1997 and 62.1 per cent in 1998. The participation of the core 18-24 age group at tertiary institutions has risen from 205.1 per 1,000 in 1990 to 283.4 per 1,000 in 1998. As at July 1998 the number of tertiary students enrolled in formal programmes of study (that is leading to a recognized award) totalled 214,351, an increase of 8 per cent over student enrolments as at July 1994. Overall participation in post-compulsory education has improved for Maori and Pacific Island people, and enrolments by women now exceed those of men except at post-graduate level.

2. Funding for the post-compulsory education and training sector

560. In 1991, a new system for funding tertiary institutions was introduced. Previously, apart from the income from students' fees and the relatively small amount available to some universities from endowments, block grants from the Government determined the income of the universities to meet their running costs for five-year periods. With these grants the universities had an obligation to determine their number of students. From 1991, the Equivalent Full-Time Student (EFTS) system has funded tertiary institutions in bulk according to the number of students and the courses that those students are taking. Polytechnics, colleges of education, universities and wananga[127] are funded in bulk according to the number of students that the institution is able to attract. Funding is delivered through nine categories so that it is roughly proportional to the cost of a course or programme. Institutions also receive a small base grant (up to $250,000). The funding is inclusive of capital works.

561. The EFTS funding system abolished detailed central decision-making about levels of staffing, operating grants, and capital works projects. These responsibilities now lie with the management of tertiary institutions themselves.

562. Improved accountability is required from all tertiary institutions under the EFTS funding system. The Education Amendment Act 1990 brought in changes that were designed to provide greater incentives for efficiency, effectiveness, flexibility and responsiveness, coupled with provisions relating to governance, institutional autonomy and academic freedom. Each institution must meet the requirements of the Public Finance Act 1989 and the Education Act 1989.

563. In the 1998 academic year the university sector received a total of $685 million through EFTS bulk funding. The polytechnics received $403 million, and the colleges of education $51 million through EFTS bulk funding. Wananga received $6.9 million.

564. The total funding to the tertiary sector in 1998 was $1.15 billion, with a total of 173,968 EFTS places.

565. The EFTS funding system was expanded to provide State funding to subsidize certain programmes in private training establishments (PTEs) in 1993. The same levels of accountability as State tertiary institutions are expected. Funding for PTEs amounted to $7 million in 1998.

3. Student allowances and loans schemes

566. The introduction in 1990 of increased tertiary fees for students, referred to in the initial report under the Covenant (para. 656), has been a contentious issue. The package of relevant government reforms has, however, been designed to increase access to tertiary education and training; and as already shown, participation trends in post-compulsory education have increased markedly during the present reporting period.

567. The new system of student allowances introduced in 1989 (initial report (para. 644)) has provided targeted assistance for living costs in the form of grants. Originally the scheme provided allowances for tertiary students 16 years and over, and secondary students aged over 18 years old on 1 January of the year they are attending secondary school. From 1998, the scheme enables secondary and tertiary students to receive a student allowance from their eighteenth birthday, provided that they meet the eligibility and targeting criteria, but some 16 to 17-year-olds may qualify. Allowances for single students under 25 are targeted to provide support for those from lower-income families. The following excerpt from the New Zealand Official Yearbook 1998 describes the general system as follows:

> "For single students the rate of allowance is dependent on the student's age, parental income (if student is under 25 years old) and whether or not the student lives at home. There are also separate rates for students with a dependant spouse and/or dependant children, those with an earning spouse, and those married to another student.
>
> "In addition, there are two separate provisions allowing for students under 25 years to apply for an allowance without being tested on the taxable income of both parents. These are:
>
> - The provision for only one parent's income to be tested to determine entitlement to a targeted benefit.
>
> - The independent circumstances allowance, where the student can be considered independent of both parents and receive the maximum targeted allowance.
>
> "Single students receiving a targeted student allowance and living away from their parental home, some married students, and those receiving a 'with dependents' rate of allowance may also qualify for an accommodation benefit, if they are receiving a targeted student allowance.
>
> "Rates of allowances are changed annually and are subject to review."

568. In addition, a student loan scheme was introduced early in the reporting period (in part by the Student Loans Scheme Act 1992) in order to assist students to participate in tertiary education. Through this scheme, the Government provides subsidized loans to such students on a non-selective basis to cover fees, course-related costs and living costs, currently on the following lines:

(a) Fees - the compulsory fees which are directly credited to the tertiary education provider at the beginning of a course (private training establishment students can only borrow up to $6,500 for fees);

(b) Course-related costs - a maximum amount of $1,000 a year for full-time full-year courses to assist with course-related costs such as equipment, textbooks, field trips. Part-time, full-year and full-time part-year students can borrow a proportion of this. The amount is determined by the weighting of the course. To gain this entitlement, students are required to provide documented justification of their expenditure;

(c) Living costs - $150 per week times the length of the course (less any entitlement to student allowances). The living component is only available to full-time students undertaking an approved course or programme.

569. Loans, on which interest is charged from the date they are drawn, are repayable through the Inland Revenue Department. The income-contingent nature of the repayment system protects borrowers on low or no income from having to make repayments. Once borrowing has ceased, if a borrower's repayment obligation is insufficient to cover base interest charges, the loan balance does not increase by more than the rate of inflation.

570. The allowances and loans schemes are designed to ensure that no one is prevented from participating in tertiary study due to financial barriers. By improving opportunities for participation in tertiary study, the schemes facilitate the development of a more educated and better skilled workforce. Young people from low-income families are encouraged to become involved in education and training past the compulsory stage as they are eligible for targeted allowances. All members of the public are encouraged to enter tertiary education and training, regardless of age, due to the availability of loans at subsidized interest rates which do not need to be paid back until the individual is earning above a given threshold. Groups with traditionally lower participation rates in tertiary education, such as Maori and Pacific Island people, tend to have higher uptake rates of student loans than other groups, suggesting that the loan scheme is particularly assisting under-represented groups to undertake tertiary study. However, concern has been voiced that young people are emerging from the tertiary sector with high levels of debt. It has been argued that this high level of debt is contributing to high emigration levels of young graduates as wages in New Zealand are not sufficiently high to assist in student loan debt repayments.

4. Foreign students' access to tertiary education

571. The following is a summary of the current position regarding foreign students' access to tertiary education. As already indicated in paragraph 545 above, the Education Act 1989 stipulates that a foreign student is simply a student who is not a domestic student. A domestic student is defined as being a New Zealand citizen, or holder of a residence permit under the Immigration Act 1987, or a person exempt from the requirement to hold a permit under that Act, or a person who is a member of a class or description of person required by the Minister of Education to be treated as if they are not foreign students.

572. Also, as shown above, the persons referred to as members of a class or description of person to be treated as if they are not foreign students have been defined by the Minister, pursuant to the Education Act 1989, by notice in the New Zealand Gazette. These notices include students studying in New Zealand under an exchange scheme approved by the Government, and students whose parents are members of a diplomatic mission or consular post.

573. A person is eligible to enrol at any tertiary institution if the person is a domestic student, an exempt student (a foreign student who is in New Zealand to study under a government-approved exchange programme), and has satisfied the entry criteria of the institution's council. Section 224 (9) of the Education Act 1989 provides that no foreign student other than an exempt student shall be enrolled in any course of study if this would preclude a domestic or exempt student from enrolling in that course.[128]

574. A foreign student is not permitted to be enrolled in a course of study or training which will be or is likely to be not less than three months, unless the course is an approved course offered by an accredited institution.

575. Section 228 of the Education Act 1989 establishes a process that a council of an institution shall use in order to fix fees for a foreign student. This is designed to ensure that foreign students (who are not exempt) meet the full costs of the educational services they receive.

N. Early childhood education; fundamental education; special education; industry training; adult and continuing education

1. Early childhood education

576. Access to high quality early childhood education is fundamentally important to young children and parents in New Zealand. Government policies aim to ensure that relevant services are affordable, that participation rates are high, that the diverse needs of the community are met, and that required quality standards are attained.

577. Early childhood services which have a charter with the Government are subsidized through sessional payments to providers on the basis of child attendance. The main providers are kindergartens, play centres, kohanga reo, Pacific Island early childhood services, education and care centres, and home-based services. Early childhood education programmes are, on the whole, developmental and based on learning through play. Government expenditure on sessional payments for chartered services and licence-exempt services was $294 million in 1998/99.[129] Some 100 per cent of 4-year-olds and 89 per cent of 3-year-olds are now enrolled in early childhood education services.[130] The pattern of use of early childhood services has changed with those who participate tending to make more use of services than previously. Since 1983 the number of Maori children enrolled in early childhood education has more than doubled; between 1991 and 1998, Maori enrolment grew by 39 per cent.

2. Right to fundamental education

578. Various developments in this context can be reported as follows.

579. In the compulsory sector the Government is seeking to ensure that every child up to the age of 16 receives appropriate education. A policy directed at at-risk students aims to improve both the opportunities to achieve and the achievement levels of students at risk of poor achievement. During the end of the reporting period 34 per cent of students left school without upper secondary qualifications (that is, less than a Sixth Form Certificate). These young people are subsequently disadvantaged in the labour market. Low educational achievement has an impact on the health of the society and economy. A number of issues are associated with at-risk students, besides educational achievement. These include: truancy, suspension and exclusions, demand for non-mainstream educational opportunities for the most at-risk students, and bullying and violence in schools. A number of new initiatives have been implemented to improve the opportunities for at-risk students to achieve well.[131] These include, for example:

(a) Increased funding for truancy initiatives. Since 1994 the Government has allocated and progressively increased funding for truancy programmes. From 1998 there has been a nationwide network of 120 District Truancy Services providing support for every school in dealing with truancy. The baseline funding for these services, as from the 1998/99 financial year, is $4.15 million per annum. The aim of the service is to reduce and prevent truancy, thereby improving educational opportunities for students who would otherwise be at risk of social and economic disadvantage;

(b) The Eliminating Violence programme. Eliminating Violence is a systems-based action research programme that aims to empower schools to reduce the incidence of violence within school settings and school communities. Through participation in the programme, young people gain an understanding of violence and how to manage their anger, teachers develop insights into the impact of their own behaviour, and parents and schools gain skills in working in partnership for the reduction of violence. The Eliminating Violence programme has been running successfully across many schools since 1996, during which the University of Auckland has conducted evaluation research demonstrating the effectiveness of the programme;

(c) Changes to suspension rules.[132] The passage of the Education Amendment Act 1998 enabled the Secretary of Education, inter alia, to make the Education (Stand-down, Suspension, Exclusion, and Expulsion) Rules 1999. These Rules regulate the practices and procedures to be followed by boards, principals, parents and students when a proposed stand-down, suspension, exclusion or expulsion is to be considered or decided.

580. The Education Amendment Act 1998 also sets in place new processes for establishing enrolment schemes to limit student intakes where schools are likely to be overcrowded. Enrolment schemes must embody certain principles, the most important of which is the desirability of students being able to attend a reasonably convenient school.[133] In the 1999 budget the Government increased funding by $21.7 million (over three years) for the expansion of the current Alternative Education funding mechanism. This funds the delivery of education in alternative learning settings for at-risk young people who have become alienated from regular school environments.

581. The initial report under the Covenant referred to the ACCESS scheme (set up by the Access Training Scheme Act 1988) designed to enhance individuals' ability to enter or re-enter the work force by improving their basic work skills (para. 662). On the expiration of the 1988 Act in 1993, the ACCESS scheme was replaced by the Training Opportunities Programme (TOP). This permitted a broader range of people to access TOP including Domestic Purposes Beneficiaries, refugees and ex-prisoners. Courses include basic education, often combined with the inculcation of other knowledge and skills, including vocational education and training. The bulk of TOP resources (except the part targeted at under-18-year-olds) has been transferred to WINZ (para. 190 above). Bridging courses in tertiary institutions are now common and are funded within the main tuition subsidy system already described. Rural Education Activities Programmes (REAPs) have now been placed on contracts to the Ministry of Education, allowing better accountability and information on outputs. A greater focus is being placed on early childhood and community education. Voluntary organizations continue to play a major role in providing educational opportunities. Some voluntary organizations are taking a more significant role; these include Literacy Aotearoa and Workbase Literacy.

582. With regard to fundamental education, it should also be noted that an increase in immigration into New Zealand during the review period has made new demands on English-language teaching, although this increase has now stabilized. Refugees have been accepted from a wider range of countries and many of these have very low levels of literacy in their own language as well as English. This has put stress on teachers and schools with a high concentration of these students. Teacher development programmes have been run since 1991 with the aim of enabling teachers to cater more effectively for these needs. There has also been an increase in funding made available to assist English language learning, including in post-compulsory education and training. While a major contribution has been in the voluntary sector, there continues to be a shortfall in the provision of such courses.

3. Special education

583. Special education services have been developed for children with disabilities, learning difficulties or behavioural difficulties who have been identified as needing alternative sources to those usually provided in regular education settings. Parents of children with special education needs have the same rights to enrol their children at the school of their choice as other parents. Pursuant to the Human Rights Act 1993 (paras. 26 ff above) it is against the law for any educational institution to treat a student differently (for example by denying or restricting access to any services) by reason of any disability. The Education Act 1989 gives the Secretary for Education the power to direct an enrolment at a particular facility if a student's special education needs cannot be met in the setting of first preference. Whenever possible, if that is their parents' preference, children with physical or other disabilities are enrolled with other children in ordinary classes. If necessary, buildings are modified, special equipment is provided and extra staff are appointed to help teachers. Advisers help staff develop suitable teacher programmes. This help is provided through funding from the Ministry of Education to boards of trustees and through the Specialist Education Services (SES), a separate government organization which has its own board. SES provides specialist advice, guidance and support for individuals, schools and early childhood centres.

584. Children with special education needs may be enrolled in a special school or in classes attached to a local school. These facilities increase the choices available to parents of children who require special education. If a child's needs cannot be met within the ordinary school system, other services are available. Students needing long-term hospital care can do their schooling in hospital. Some hospitals have registered State schools while others may have classes on site which are administered by local schools. Residential special schools provide teaching and live-in care for children with major learning, behavioural or emotional needs. Children with sight or hearing disabilities may attend mainstream schools and may also have the opportunity to attend specialist residential schools. Health camps, which children in need of rest and recovery may attend for short periods, have both classroom and outdoor educational programmes.

585. Funding for special education represented about 7 per cent of the forecast expenditure on school education for the 1996/97 fiscal year; and at August 1996 there were 16,572 students receiving special education discretionary assistance (SEDA). From 1997 the Government has been implementing a "Special Education 2000" initiative which is a further measure specifically targeted for schools to assist students with learning and behavioural difficulties. While needs vary enormously between individuals, the aim of the strategy is to improve learning opportunities for students with special education needs in the early childhood and school years. The Special Education Grant established in the first phase of the project was increased from $14 million in 1997 to about $29 million in 1998. Further elements and initiatives are still being introduced.[134]

4. Industry training

586. An Industry Skills Training Strategy has been established, under the auspices of the Industry Training Act 1992, to increase the quality, relevance and overall amount of systematic industry training in New Zealand. The intention of the Strategy is to increase the responsiveness of training to meet industry needs, including giving industry control over Government resources to support training and authority to set standards. The 1992 Act provides for a Crown agency known as Skill New Zealand (formerly the Education and Training Support Agency) to recognize and fund Industry Training Organizations (ITOs). These ITOs are responsible for the design, management and delivery of training arrangements for their respective industries; they do not provide the training themselves. Approximately 48,900 trainees were undertaking systematic industry training in 1998, and many industries have established standards within the National Qualifications Framework. Industry is expected to contribute towards the costs of standards development and training. The Government is planning to review current Enterprise Education arrangements.

587. Among the training initiatives concerned has been Skill Enhancement - a programme providing vocational education and training to Maori and Pacific Island people under the age of 21.

5. Adult and continuing education

588. In addition to the Correspondence School referred to in paragraphs 548 ff above, other facilities for continuing and adult education are described in Continuing Education, extracted

from the New Zealand Official Yearbook 1998 (attached among the supplementary materials). A commentary and tables set in the OECD report Education at a Glance show that based on figures for 1994/95 New Zealand now ranks highly in the percentage of 25 to 64-year-olds participating in continuing education, including job- or career-related education.[135]

O. Further statistics

589. In its reporting guidelines, the Committee has requested statistics on graduating rates at various levels of education, disaggregated if possible by sex, and other indicators. Basic data have been provided already (see para. 510 above) as to a range of the highest qualifications attained by the New Zealand population according to age, sex and ethnic group, founded upon the 1996 census. This material may be supplemented by consulting annex 24, which sets out further data derived specifically from the Ministry of Education's sources. For the specimen year 1996, this annex shows tables of:[136]

(a) Number of secondary school leavers during 1996, by years of schooling, sex, and ethnicity;

(b) Number of secondary school leavers during 1996, by attainment, sex, and ethnicity;

(c) Number of all tertiary graduates (university or otherwise) in 1996 by attainment, and sex, with a diagram illustrating respective male/female rates of attainment of bachelors degrees in selected subjects in 1996.

590. Annex 24 also includes a table of university degrees and other university qualifications in 1992 by attainment and sex, with a diagram illustrating respective male/female rates of attainment of bachelors degrees in selected subjects in 1991.[137]

Article 14 - The principle of compulsory education free of charge for all

591. Reference is made to the initial report under the Covenant, and to updated information provided under article 13 above.

Article 15 - The right to culture and to benefit from scientific progress

A. Summary of key developments

592. This section of the report centres on the following key developments:

(a) Establishment of the Ministry of Cultural Affairs and of the new Museum of New Zealand Te Papa Tongarewa;

(b) Reform of censorship and defamation legislation;

(c) Reform of government-funded research, science and technology.

B. Measures adopted to realize the right to take part in a cultural life

593. The relevant principal laws and measures remain much as indicated in New Zealand's initial report under the Covenant (paras. 749 ff), but as foreshadowed in that report (para. 764), a Ministry of Cultural Affairs (now Ministry of Culture and Heritage) has been established. As may be apparent from the initial report, in establishing forms of support for the cultural sector (such as the Broadcasting Commission), New Zealand has favoured the "arm's length" model followed in other English-speaking Commonwealth countries. According to this model, there is no single piece of legislation relating to cultural policy, but the Government owns and funds a variety of cultural agencies and appoints their boards, which are required to perform functions prescribed by a statute. Within the limits of this statute, each agency acts autonomously in determining and implementing policy. The model allows the sector to develop without undue government interference, and, therefore, serves to protect freedom of expression. The latter freedom was reaffirmed, at the beginning of the present reporting period, by its incorporation in section 14 of the New Zealand Bill of Rights Act 1990. Government also contributes funding to a small number of non-governmental cultural bodies.

594. While Government support for the cultural sector has continued, there has been in the last 10 years a new emphasis on ensuring the financial accountability of the recipients of public funding, and on justifying support in terms of the public demand that is met. During the reporting period the funding of the cultural sector has shifted from receiving Government appropriations towards receiving funding through lottery grants. An exception, however, has been the substantial government funding of the new Museum of New Zealand. Over the same period, the globalization of popular culture has prompted debate about the nature of New Zealand's cultural identity, and indeed, as part of its aims for the period 1997-2000, the Government had identified the objective of developing a policy framework to "stimulate and affirm New Zealand's evolving identity and cultural heritage". As compared with the previous decade, there are, for example, more locally produced radio and television hours, however, with the proliferation of channels in both media, the total number of broadcast hours has also increased.

C. Financing of cultural activities

595. The main funders of the arts continue to be central Government and the Lottery Grants Board. The following tables show the total expenditure by central Government and the Board in 1991/92 and in 1995/96. As set out in New Zealand's initial report, the Lottery Grants Board has the statutory role of distributing the profits of Government-run national lotteries for statutory and charitable purposes. At the request of the Government the Lottery Grants Board allocates fixed percentages of its income to Creative New Zealand (see para. 609 below), the New Zealand Film Commission, and the New Zealand Film Archive. In recent years the Lottery Grants Board grants for these agencies have been substantially greater than the funding provided to them by the Government through the Cultural Affairs Vote. The Lottery Grants board also provides grants for cultural facilities and for cultural heritage projects.

	1991/92 $000	1995/96 $000	1996/97
Government	16 435	97 991	74 415
Lottery Grants Board	48 406	30 645	31 598

596. The major cause of the fluctuation in Government spending on the sector between 1991/92 and 1996/97 is the construction costs of the new Museum of New Zealand Te Papa Tongarewa building, which peaked in 1995/96. A table of government output and capital expenditure on culture 1990/91-1998/99 is attached as annex 25.

597. Government spending on the cultural sector as a percentage of total expenditure over a decade shows the following pattern:

1986/87	1991/92	1996/97
0.25%	0.39%	0.41%

598. Adding the central Government's spending on areas of education related to the cultural sector in 1996/97 would raise the percentage for that year to approximately 2.4 per cent. However, estimating expenditure on cultural education raises questions of definition and precise calculation is difficult.[138]

599. Total figures for local government spending on culture are not available, but in general over 60 per cent of museums and art galleries are funded by local government. Spending on cultural purposes by local authorities varies significantly, depending on the extent to which a local authority has a developed cultural programme and infrastructure. However, most local authorities provide library services and, in the larger centres, own or support museums and galleries. There are 460 museums and galleries in New Zealand. Creative New Zealand (para. 608 below) provides each of New Zealand's 74 local authorities with a base grant and per capita funding. This totalled $2.5 million in 1996/97.

D. Ministry of Cultural Affairs

600. After a government ministerial portfolio for the cultural sector had first been introduced in 1975, a special Ministry of Cultural Affairs as such was at last established in 1991, the former portfolio of the Minister of Arts and Culture being replaced by that of Minister of Cultural Affairs. Before the establishment of the new Ministry, the Department of Internal Affairs was the Government's chief adviser on cultural policy. The Ministry of Cultural Affairs accordingly took responsibility for arts and cultural heritage issues from that Department. In deciding to establish a special ministry, the Government also determined that it should be concerned only with policy. Service delivery functions remained with the Department of Internal Affairs or were relocated elsewhere. In addition, a number of other departments (seven in 1998 and 1999) have responsibility for aspects of New Zealand's cultural administration.

601. The role of the new Ministry is to provide advice to the Government on cultural matters overall, and assist the Government in its provision and management of cultural resources for the benefit of all New Zealanders. The Ministry achieves this by advising on cultural policy issues; reviewing cultural legislation; reviewing cultural projects; administering grants to cultural sector

agencies and initiating projects, investigations and studies in the cultural sector. As at July 1999, the agencies whose grants (totalling about $38 million in 1998/99) were administered by the Ministry were:

Arts Council of New Zealand Toi Aotearoa (known as Creative New Zealand);

New Zealand Film Commission;

Museum of New Zealand Te Papa Tongarewa (known as Te Papa);

New Zealand Symphony Orchestra;

New Zealand Film Archive;

Royal New Zealand Ballet;

Aotearoa Traditional Maori Performing Arts Society.

The Ministry also administers government grants for major capital projects at regional museums, and a scheme to indemnify museums and art galleries against the liability for loss or damage to touring exhibitions.

602. In August 1998 the Government began a formal review of all its departmental structures relating to culture. For this purpose the Ministry produced in late 1998 a paper entitled "Government's Role in the Cultural Sector: A Survey of the Issues" (attached among the supplementary materials). Subsequently, as from 1 September 1999, the Ministry has been renamed as the Ministry for Culture and Heritage, with an expanded mandate, taking over relevant policy responsibilities from the Internal Affairs and Conservation departments, and from the Ministry of Commerce. From this date the renamed Ministry has assumed charge of both heritage policy and cultural broadcasting policy, covering the Historic Places Trust and New Zealand On Air.

E. The Museum of New Zealand Te Papa Tongarewa

603. In 1990 the 150th anniversary of the signing of the 1840 Treaty of Waitangi became the springboard for a number of major cultural projects, including the production of the Dictionary of New Zealand Biography (para. 636 below). The sense of historic occasion surrounding 1990 also became a spur for the Government to proceed with the establishment of the Museum of New Zealand Te Papa Tongarewa. As an institution, the Museum replaces the previous National Museum and National Art Gallery of 1936. Its building on the Wellington waterfront, opened in February 1998, and three times larger than before, is the largest capital project in the cultural sector yet to be funded by central Government.

604. The Museum of New Zealand Te Papa Tongarewa Act 1992 establishes the museum as a national forum to present, explore, and preserve both cultural heritage and environmental knowledge "in order better to understand and treasure the past, ... enrich the present [and] meet

the challenges of the future". The museum's interpretation of the language used in the Act is that it has to seek a new kind of relationship with its visitors, and that the traditional form of static museum display is not desirable. It has proved an extremely popular facility.

F. New Zealand Lottery Grants Board

605. The New Zealand Lottery Grants Board has been referred to in paragraphs 595 ff above and in the initial report (paras. 765 ff). During the present review period there have been some changes to the structure of the Lottery Committees. Three Lottery Distribution Committees now provide funds for cultural purposes. The Lottery Environment and Heritage Committee provides grants for community initiatives, including project and capital costs to restore buildings, archaeological sites, art galleries and museums. The Lottery Community Facilities Committee gives grants towards the capital costs of community theatres, concert halls, craft centres, community libraries and Maori and Pacific Island community facilities.

606. A Marae Heritage and Facilities Committee was created at the beginning of the 1997/98 financial year in order to fund the preservation and development of marae[139] facilities. Marae have always been eligible for funding from various Lottery Distribution Committees in the past. However, the Board, which recognizes the principles of the Treaty of Waitangi, has decided to improve its responsiveness to Maori by establishing a single committee to consider funding applications for marae facilities projects. The Committee allocated $6 million for the 1997/98 year; the same is allotted for each of the years 1998/99 and 1999/2000. In addition, a fourth lottery committee, Lottery General, sometimes provides funding for cultural facilities to supplement the grants made by the other committees.

G. Arts Council of New Zealand Toi Aotearoa

607. The Arts Council of New Zealand Toi Aotearoa Act 1994 established a new structure and functions for the Arts Council. The Queen Elizabeth II Arts Council, the three regional arts councils and the Council for Maori and South Pacific Arts (see New Zealand's initial report (paras. 769 ff)) were abolished. A new national body for the arts, known as the Arts Council of New Zealand Toi Aotearoa, and two arts boards of equal status were created.

608. The Arts Council of New Zealand Toi Aotearoa (which has the operating name of Creative New Zealand) is an independent statutory body which is responsible for setting the overall policy of the organization and apportions funding between the two arts boards. The arts boards are responsible for the delivery of funding to the arts: one board, known as Te Waka Toi, funds Maori arts; the other, the Arts Board, supports the arts of all New Zealanders. The creation of Te Waka Toi is in itself recognition of the important role that Maori play in the arts of New Zealand. The new legislation also includes provision for a statutory South Pacific Arts Committee of the Arts Board to provide support for Pacific Islands Art.

609. Creative New Zealand currently receives a fixed percentage of Lottery Grants Board profits each year. In the 1994/95 financial year it received total public funding of $24,141,000. Central government funding accounted for $3,807,000 with the remaining $20,334,000 being

provided from lottery funds. In the 1998/99 financial year, Creative New Zealand received total public funding of $26,537,000. Government Vote funding accounted for $2,631,000 with the remaining $23,906,000 being provided from lottery funds.

II. Promotion of cultural identity and promotion of awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous peoples

1. General

610. Besides lifting the profile of culture and the arts within government and publicly, the new Ministry for Culture and Heritage contributes to a number of government outcomes which in practice advance the above aims. These include: coordinated government policy in the cultural sector; the encouragement of creative expression by and for New Zealanders; the promotion of New Zealand's cultural identity both in New Zealand and overseas; the support of cultural expression in education and social policy; and improved management of New Zealand's cultural heritage. To assist with the development of a more coordinated approach to cultural policies, the Ministry developed the survey of Government's role in the cultural sector already referred to in paragraph 602 above. It has also, during the reporting period, together with Statistics New Zealand produced a series of important basic studies focusing on New Zealand's particular cultural identity: New Zealand Cultural Statistics 1995; New Zealand Framework for Cultural Statistics 1996; Household Spending on Culture 1996; Employment in the Cultural Sector 1998, and Government Spending on Culture 1990-1999. Similar ongoing projects include a survey of cultural sponsorship, initiated in late 1998, to learn the views and intentions of New Zealand businesses in that regard.

611. Te Puni Kokiri has undertaken a review (known as the Taonga Maori Review) of Government's role in Maori culture and heritage. The purpose of the Taonga Maori Review is to clarify Government's role in Maori culture and heritage. The review has three main components:

(a) To describe and assess current arrangements in the culture and heritage sector in relation to Maori culture and heritage;

(b) To develop a policy statement on the role of Government in Maori culture and heritage;

(c) To develop options aimed at providing better coordinated and more responsive policy advice and service delivery to Maori for the protection and development of Maori culture and heritage.

612. The review picks up on matters excluded from the survey of Government's role in the cultural sector. An assessment of current arrangements in the culture and heritage sector in relation to Maori culture and heritage has been completed. The review is yet to be finalized pending approval of a draft policy statement on the role of Government in Maori culture and heritage.

613. The continued need to preserve and enhance the significance of Maori and other major aspects of New Zealand's cultural heritage and ethnic composition has been increasingly recognized during the review period, as may be evident from information and comments given, for example, under article 13 and under the present article.

2. New museum of New Zealand

614. Of significance has been the expression, in section 8 of the Museum of New Zealand Te Papa Tongarewa Act 1992, of the requirement that the Museum Board, in performing its functions, shall:

(a) Have regard to the ethnic and cultural diversity of the people of New Zealand, and the contributions they have made and continue to make to New Zealand's cultural life and the fabric of New Zealand society;

(b) Endeavour to ensure both that the museum expresses and recognizes the mana and significance of Maori, European, and other major traditions and cultural heritages, and that the museum provides the means for every such culture to contribute effectively to the museum as a statement of New Zealand's identity;

(c) Endeavour to ensure that the museum is a source of pride for all New Zealanders.

615. The museum thus seeks to tell more vividly the stories of all New Zealand's peoples, our culture and distinct natural environment. As previously, it has particularly strong collections in Polynesian, Micronesian and Melanesian art and culture. Maori art and culture figure prominently, but current exhibitions include a section traversing the history of all New Zealand's main immigrant groups. The museum is the first institution in the world to include a purpose-built fully functioning marae.

3. Maori language

616. Some developments in the use and furtherance of the Maori language were outlined in New Zealand's tenth and eleventh (consolidated) reports under the International Convention on the Elimination of All Forms of Racial Discrimination (paras. 83-87).

617. The Maori Language Act 1987 declared the Maori language to be an official language of New Zealand, conferred the right to speak Maori in certain legal proceedings, and established a special Maori Language Commission to develop and promote the language. As shown in the above reports, a 1991 Amendment to the Act extended the number of areas in which the right to speak Maori was accorded in legal proceedings. More generally, however, during the present reporting period, practical recognition of the Maori language as an official language of New Zealand has increased considerably. This is particularly so in the public sector, as evidenced by the number of government agencies which have their titles in Maori and English, provide dual nomenclature in Maori and English, advertise for positions in Maori, provide reception services in Maori and provide information and promotional items in both the English and the Maori languages. In the private sector there has also been an increase in the recognition

of the Maori language as evidenced by the acceptance by all the major trading banks of cheques written in Maori, New Zealand Post acceptance of mail addressed in Maori and some retail companies providing Maori language for labelling purposes on their products.

618. On 6 July 1994 the Government declared 1995 to be the Year of the Maori Language (He Taonga Te Reo). This marked New Zealand's contribution to the first year of the International Decade of the World's Indigenous People. As a major project for He Taonga Te Reo, the Ministry of Maori Development (Te Puni Kokiri) initiated the National Maori Language Survey of 1995 as a means of providing accurate and adequate information for future action. The findings of this comprehensive Survey indicated that while more than half the Maori adult population speak some Maori, only 8 per cent are highly fluent, that with the loss of the older fluent population every year, transmission of the language through that source is diminishing, and that in general, despite the substantial resurgence of indigenous language interest and activity in recent years, policies and processes must be developed to improve the status and vitality of the language.[140]

619. In 1996, the Government began work on the development of a Maori Language Strategy. In 1997, the Crown agreed that the Crown and Maori are under a duty derived from the Treaty of Waitangi to take all reasonable steps to actively enable the survival of Maori as a living language. This recognition provided the pathway for further work being done on Maori language revitalization.

620. Acknowledging the determined efforts to revitalize the Maori language, the Government has been developing its Maori Language Strategy. Through the Strategy, Government aims both to assist Maori in their efforts to revitalize the Maori language, and to ensure that the various public sector agencies play their part in the process.

621. Government's Maori Language Strategy has five key aspects:

(a) The development and implementation of a Maori Language Education Plan;

(b) The fostering of Maori language radio and television;

(c) Maori Language Guidelines to assist public service departments to develop their own Maori Language Policies and Maori Language Plans;

(d) The development and implementation of Maori language corpus activities;

(e) The development and implementation of appropriate mechanisms for monitoring and evaluating Maori language activities in a coordinated way.

622. To address the third key aspect above, Te Puni Kokiri has recently released Matatupu Maori Language Policies and Plans: Guidelines to Assist Public Service Departments and Matatupu - How to Develop Your Maori Language Policies and Plans (attached among the supplementary materials).

4. Maori broadcasting

623. Under the Radiocommunications Act 1989, frequencies suitable for radio and television were reserved throughout New Zealand for the promotion of Maori language and culture. Prior to the 1988-1989 broadcasting reforms, one iwi-based radio station (Wellington's Te Upoko o te Ika) had been broadcasting continuously. There are now 21 iwi-based radio stations broadcasting. After 1989, the Broadcasting Commission referred to in New Zealand's initial report under the Covenant (paras. 790 ff) and known since 1990 as NZ On Air, provided public funding for the operating and capital costs of Maori radio stations, and for the production of Maori programmes to broadcast on network television. The Broadcasting Amendment Act 1993, however, established a new Maori broadcasting funding agency, Te Reo Whakapuaki Irirangi (now known as Te Mangai Paho). On 1 January 1995, Te Mangai Paho assumed primary responsibility for the allocation of public funding for Maori broadcasting, which currently includes support for Maori programming on television, iwi radio stations and some Maori radio programming available on a networked basis. The nature and scope of Te Mangai Paho's activities are set out further in the agency's Annual report 1999 (attached among the supplementary materials).

624. In response to litigation by Maori the Government has been further developing a Maori broadcasting policy.[141] Maori broadcasting consultation hui (meetings) were conducted throughout New Zealand in 1997 to determine Maori views on the establishment of a Maori television station. A capital sum of up to $11,360,000 (including GST) has been agreed for the establishment of a Maori television channel. In addition, Te Mangai Paho's budget for the purchase of television programmes has been increased to approximately $19.3 million (including GST).

5. Ethnic Affairs Service

625. An Ethnic Affairs Service was established in 1992 as part of the Department of Internal Affairs. The Service has provided policy advice and information to Government and non-government agencies on issues relating to ethnic groups (groups other than Maori and Pacific Islanders, who have their own ministries). According to the 1996 census, there are more than 50 such ethnic groups in New Zealand, comprising approximately 8 per cent of the resident population of New Zealand.

626. The goals of the Service include fostering the acceptance and valuing of ethnic diversity in New Zealand society, and facilitating communication between ethnic communities and Government.

627. The Ethnic Affairs Service has carried out a wide range of advisory and information tasks since its establishment. These included the development of guidelines to promote the use of interpreters by government agencies, and a survey of employment qualifications and training issues for recent immigrants to New Zealand. In recent years ethnic affairs policy is now handled within the newly formed Policy Group. Support, information and assistance to ethnic communities and other key agencies continue to be provided by a new Community Development Group (CDG) within the same Department. The Policy Group has been developing an Ethnic Affairs Policy Framework to cover the Government's diverse ethnic policies and programmes

at the end of the reporting period. A project sponsored by the CDG is the production of an up-to-date profile of the main non-Maori and non-Pacific Island ethnic minorities in New Zealand; this was completed in 1999 and will be discussed in the next periodic report under the Covenant.

I. Role of mass media and communications media in promoting participation in cultural life

628. Expenditure through NZ On Air [142] (which provides government funding for broadcasting) for the reporting period is as set out in annex 26. Expenditure by the new Maori broadcasting funding agency has already been referred to under paragraphs 623, 624 above.

629. As to modus operandi, the emphasis is on industry self-regulation, and broadcasters are expected to develop their own codes of broadcasting practice (and consider complaints in the first instance) concerning alleged breaches of the standards provisions in the Broadcasting Act 1989. The Broadcasting Standards Authority is responsible for encouraging broadcasters to develop and observe appropriate codes of broadcasting practice. Following a review of the Broadcasting Standards Authority in 1991, the Government decided in principle to remove responsibility for advertising standards matters from the Authority and place those matters with the established industry self-regulating bodies - the Advertising Standards Authority Inc. and the Advertising Standards Complaints Board - which are funded by advertisers. The Broadcasting Amendment Act 1993 provided a regulatory basis for this transfer.

630. As well as the three stations operated by Radio New Zealand Ltd., approximately 180 radio stations are operated by private broadcasters. The private television station referred to in New Zealand's initial report under the Covenant (para. 801), TV3, began broadcasting in 1989, now broadcasts to over 90 per cent of the population, and has established a second channel, TV4. The TVNZ Group (see initial report (paras. 801 ff)) now operates two national channels (TV One and TV2), and has a number of subsidiaries and other broadcasting interests. TVNZ aims to provide New Zealanders with quality television programmes and broadcasting services. It also endeavours to present programmes which reflect and foster New Zealand's identity and culture. A State-owned enterprise, it is charged with being a commercially successful electronic communications business. TVNZ broadcasts its services to approximately 1,126,000 households, and has almost 100 per cent coverage of the New Zealand population and 70 per cent audience share. Its channels broadcast 24 hours a day, seven days a week.

631. In addition, Sky Television Ltd. now broadcasts five analogue pay channels and currently over 35 on its digital platform. Telstra Saturn also broadcasts 15 channels in addition to those available free to air.

632. In the period 1990-1998, 51,883 hours of local content (defined as "by and for New Zealanders") were broadcast on the three national free-to-air channels. Recent growth trend in the amount of local content broadcast may be seen in the figures for 1996 (5,065 hours), 1997 (5,600 hours), 1998 (6,298 hours) and 1999 (6,142 hours).

633. In connection with media, information, and the right of people to enjoy the benefits of scientific progress and its application, it may be noted that the proceedings of Parliament have

been able to be televized for public broadcasting of news items on a regular basis, since 1991. In addition, a pilot scheme for use of electronic media in courts was conducted in New Zealand from 1995 to 1998. The main public interest has been in the use of television in courts, under regulated conditions, for news programme purposes. Subsequently (May 1999), the rules of the project relating to such use have (subject to some amendment) been endorsed by the judges. Therefore, electronic media are used for reporting from courtrooms.

J. Preservation and presentation of cultural heritage

1. National Archives

634. National Archives of New Zealand Te Whare Tohu Tuhituhinga o Aotearoa is the largest repository of unpublished information on the history and culture of New Zealand. As foreshadowed in New Zealand's initial report under the Covenant (para. 813), the National Archives headquarters in Wellington moved in 1991 to new premises and was renovated to meet its varied needs in terms of storage, conservation and public access to information.

635. The National Archives collection has been valued and included in the Government's financial statement since 1991. The 1998 estimate of the value of its holdings is $456,751,536. The operating budget for the National Archives in 1998/1999 was $9,666,244.

2. Dictionary of National Biography

636. As noted in New Zealand's initial report under the Covenant (para. 840), a unit was established in the Department of Internal Affairs in 1983 to produce the Dictionary of New Zealand Biography. This unit is now part of the enlarged Ministry for Culture and Heritage (para. 606 above). Four volumes covering 1769-1940 were published between 1990 and 1998. Each volume contains some 600 essays on people of the past. There is a parallel series of volumes in the Maori language, consisting of translations into Maori of the biographies of Maori subjects in each of the English-language volumes. Four such volumes have been issued. (The unit also publishes subsidiary publications.) Selection of subjects for each volume of the Biography draws on community input including ethnic minorities.

3. Maori cultural heritage

637. During the review period, the Department of Internal Affairs has been working on a Protection of Moveable Cultural Heritage Bill to provide for greater recognition of the Treaty of Waitangi by vesting the ownership of newly found Maori (and Moriori) objects with the appropriate iwi. This work was still proceeding during the end of the reporting period, but now under the responsibility of the Ministry for Culture and Heritage.

638. A Taonga Maori Protection Bill was introduced to Parliament (as a private Member's Bill) in 1996, with a view to establishing a register for taonga Maori [143] and a trust to assist in the administration of the register as well as the repatriation of taonga Maori held overseas. This measure was, after consideration by the Maori Affairs Committee of Parliament, approved in 1999 as a Government Bill. The Bill is suspended pending the outcome of the Taonga Maori Review (para. 611 above).

K. Freedom of artistic creation

1. Censorship

639. The Films, Videos and Publications Classification Act 1993 brings together and rationalizes the laws and regimes relating to censorship of printed and other material, the public exhibition of films, and the labelling and classification of video recordings. A new Office of Film and Literature Classification is responsible for the legal classification of all material covered by the Act.

640. A uniform set of revised classification criteria is set out in section 3 of the Act. The decision whether or not to prohibit a publication will depend on whether that publication is "objectionable". The legal test for prohibition of objectionable material is that the availability of the material "is likely to be injurious to the public good" (Police v. News Media Ownership Ltd. [1975] 1 NZLR 610, 615 (CA) McCarthy P). Certain publications will be deemed to be objectionable on their own terms. These are publications which promote or support the sexual exploitation of children, sexual violence, acts of torture or extreme violence, bestiality, necrophilia, urolagnia and coprophilia. The Classification Office is able to impose conditions on the public display of publications which have been classified as restricted. Possible conditions include a condition that a publication be displayed with the classification on its cover or package, that a publication be displayed in a sealed or opaque package, or that it not be publicly displayed, but only available on request.

641. The Court of Appeal, in a landmark decision, explored the relationship between freedom of expression (section 14 of the New Zealand Bill of Rights Act 1990) and censorship legislation at the end of the reporting period. The Film and Literature Board of Review had determined that a book containing stories describing sexual activity between men and boys, and various photographs of naked children, were objectionable in terms of section 3 of the Films, Videos and Publications Classification Act 1993. The appellant's main submission was to the effect that the Board had not correctly considered the impact of the New Zealand Bill of Rights Act 1990 on the censorship legislation. The Court held (Moonen v. Film and Literature Board of Review (1999) 5 HRNZ 214, 233 [15],[16] Tipping J) that:

> "[u]nder section 14 of the Bill of Rights, everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form. This right is as wide as human thought and imagination. Censorship of publications to any extent acts as a pro tanto abrogation of the right to freedom of expression. The rationale of such abrogation is that other values are seen as predominating over freedom of expression. Nevertheless, the extent of the pro tanto abrogation brought about by censorship legislation must, in terms of s 5 of the Bill of Rights, constitute only such reasonable limitation on freedom of expression as can be demonstrably justified in a free and democratic society ... This right [freedom of expression] must be given full weight in the construction of the Act, and in any classification made thereunder ... [I]f there are two tenable meanings, the one which is most in harmony with the Bill of Rights must be adopted."

2. Defamation

642. The Defamation Act 1992 now replaces the Defamation Act 1954 and clarifies the law of defamation. While previous defences have remained, some of these, such as the defence of justification, have been renamed and some have been replaced. For example, the defence of fair comment is replaced by the defence of honest opinion. The defence of honest opinion will succeed if the defendant proves that the opinion expressed was his or her genuine opinion and was based on facts that are substantially true or not materially different from the truth. Fair and accurate reports of matters such as proceedings in the House of Parliament are protected by qualified privilege. In the case of Lange v. Atkinson ([1998] 3 NZLR 424) the Court of Appeal was concerned with qualified privilege and whether the defence of "political expression" was available in defamation actions. The appellant in this case, a former Prime Minister of New Zealand and at the relevant time a member of Parliament, claimed that statements made by the respondent were defamatory. He wanted to protect his reputation against statements he claimed were false. The respondents, a political scientist and journalist and his publisher, claimed that the right to freedom of expression entitled them to make false statements about parliamentarians on matters of public concern. The court held for the respondents, stating [144] that the defence of qualified privilege applies to generally published statements made about the actions and qualities of those currently or formerly elected to Parliament and those with immediate aspirations to be members, so far as those actions and qualities directly affect or affected their capacity (including their personal ability and willingness) to meet their public responsibilities. The determination of the matters that bear on that capacity will depend on a consideration of what is properly a matter of public concern rather than of private concern.

643. The Defamation Act 1992 introduced the new remedy of a court-recommended correction. At an early stage in defamation proceedings a judge may recommend that the defendant publish a correction of factual matter. The judge may recommend the content of the correction, the time of its publication and the prominence with which it is to be published.

L. Protection of moral and material interests of authors

644. Relevant laws passed during the review period were the Copyright Act 1994 and the Layout Designs Act 1994.

1. Copyright

645. The Copyright Act 1994 gives effect to New Zealand's WTO obligations in the copyright area, as set out in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

646. The TRIPS Agreement requires New Zealand to grant to nationals of other signatories to the WTO Agreement no less favourable copyright protection than it gives to New Zealanders. New Zealand is already obliged to do this for countries which are members of the Berne Convention and the Universal Copyright Convention. In a number of respects the 1994 Act repeats the substance of the existing law which was contained in the Copyright Act 1962. New provisions in the Act are in the following areas:

(a) Express protection for computer programmes and improved protection for cable television and other cable services is provided;

(b) Part IV of the Copyright Act introduces moral rights. The following moral rights are now provided for:

(c) The right to be identified as the author of a work;

(d) The right to object to the derogatory treatment of a work which prejudices the honour or reputation of the author;

(e) The right of an author not to have a work falsely attributed to him or her; and

(f) The right to privacy in respect to certain photographs and films.

647. New border enforcement measures for pirated copies of copyright works are provided in Part VII of the Act. These are required by TRIPS. Part IX of the Act introduces performers' rights, another TRIPS requirement. The Act gives a performer the right to control the recording or broadcast of his or her performance, and the use of recordings made without their consent. A performer's rights are infringed by a person who without the performer's consent imports into New Zealand, or deals in, illicit recordings.

2. Layout Designs

648. The Layout Designs Act 1994 creates statutory property rights in original layout designs for integrated circuits, as required by Part II (6) of the TRIPS.

M. Protection of Maori cultural and intellectual property

649. Maori cultural and intellectual property is a complex area, and during the reporting period there were a series of related government policy and legislative initiatives under way including:

(a) Joint Ministry of Maori Development, Te Puni Kokiri, and Ministry of Commerce consideration of such issues;

(b) Relevant review of patents, trade marks, and designs legislation; the Taonga Maori Protection legislation referred to in paragraph 638 above;

(c) The development of a conservation policy, for example, in the New Zealand Biodiversity Strategy. A 140-page draft of this Strategy was issued in December 1998, as devised by the Department of Conservation and the Ministry for the Environment, and then launched by the Prime Minister in January 1999. It provides specifically, in its objectives, for

measures to recognize and respect the role of mataurangа Maori (Maori traditional knowledge) in biodiversity management, provide for its retention and protection and develop relevant partnerships between Maori and the Crown agencies to that end. At the end of the reporting period the draft Strategy was in process of public consultation;

(d) Review of land-based historic and cultural heritage management.

650. In this general context, considerable interest attaches to a claim lodged in October 1991 by a number of Maori with the Waitangi Tribunal established under the Treaty of Waitangi Act 1975. Pursuant to that Act, the Tribunal is empowered to make recommendations to the Government relating to the practical application of the historic Treaty of Waitangi of 1840. The case lodged in 1991 (and known as the Wai 262 claim) is, in essence, a claim to the ownership of indigenous flora and fauna and all aspects of Maori knowledge and culture. The claimants allege that a particular guarantee of the Treaty protected Maori proprietary interests and rights relating to indigenous fauna and flora, and all knowledge related to those resources, including commercial interests in the use of the resources of fauna and flora and any associated intellectual property. In addition, the claimants bring into the claim any matters which they perceive come within the phrase from the Maori version of the Treaty, me o ratou taonga katoa (and all other treasured things). The claim is an extensive and complicated one. During the reporting period, various definite steps in the proceedings have been taken, including in 1996 the authorizing and financing of the claimants to commission research on the issues. A panel to hear the claim was appointed in 1997, and has commenced hearing traditional evidence from the claimants. That hearing is ongoing.

N. Application of scientific progress for the benefit of everyone, including measures to promote a pure environment: further organizational change

1. General

651. As foreshadowed in New Zealand's initial report under the Covenant (paras. 862 ff), the management and organization of public investment in research, science and technology have undergone major reforms during the reporting period. These reforms have been designed to improve the efficiency and effectiveness of this sector so as to enable it to better contribute to national prosperity and well-being.

652. A key element of the science reforms has been the organizational separation of the Government's involvement in research, science and technology into the three areas: policy, purchasing, and research and development activities. The separation of operational activities, such as research, from policy has enabled those operational activities to focus more clearly on the impact of the public investment. The New Zealand science system used to consist of a small number of large government departments with mixed policy, funding and research roles. The new system is characterized by a larger number of more highly focused operating agencies faced with much stronger and more transparent disciplines for improved performance and greater benefit for New Zealand.

653. In place of the previous Department of Scientific and Industrial Research (initial report, para. 854) [145] a new Ministry of Research, Science and Technology (MoRST) (initial report, para. 855) is the primary adviser to the Government on science and technology policy, including advice on science investment priorities and funding.

654. Up until July 1992, publicly funded scientific research and development used to be carried out mainly by government departments, notably the Department of Scientific and Industrial Research, the appropriate divisions of the Ministry of Agriculture and Fisheries, the New Zealand Meteorological Service, the Ministry of Forestry and the Department of Health. These Departments were restructured to enable their research activities to be continued in newly formed Government-owned companies or Crown Research Institutes (CRIs). The nine autonomous Research Institutes are registered as companies in New Zealand law. Each CRI has its own board of directors, appointed by the Government, and manages its own assets. Ownership of the CRIs remains with the Government, represented by two shareholding ministers, the Minister for Crown Research Institutes and the Minister of Finance.

655. The CRIs (each of which is focused on a productive sector of the economy or a grouping of natural resources) were established under the Crown Research Institutes Act 1992. The Act requires the CRIs to undertake research and provide related services. The research must be of an excellent standard, be for the benefit of New Zealand and the results disseminated to potential users. The CRI structure provides an open and flexible framework for the management of science and is creating stronger collaboration between the public and private sectors in the areas of research and development and technology transfer. The company structure adopted for the CRIs (as described above) provides them with full commercial powers which allows them to borrow funds and form joint ventures and subsidiary companies so that they are able to exploit the commercial potential of new developments fully for the benefit of New Zealand.

656. There are thus two ministerial portfolios in the Government with specific responsibilities for science and technology. These portfolios are Research Science and Technology under MoRST, and Crown Research Institutes. The latter portfolio covers the Government's ownership interest in the CRIs. In addition, a Crown Company Monitoring Unit, established in 1993, advises the two ministers who hold shares in the Government's nine CRIs - the Minister of Finance and the Minister for Crown Research Institutes - on the performance of the various CRI Boards.

2. Investment in research, science and technology (R, S&T)

657. New Zealand's publicly funded research effort is managed through Vote: R, S&T and Vote: Education and the private sector suppliers. A 1997-1998 survey released by MoRST in 1999 showed that the total expenditure for research and development was $1,107 million, or 1.1 per cent of GDP. This was an increase from 0.99 per cent in 1995-1996.

658. As for government funding as such, total public investment in 1997-1998 was approximately $562 million (including GST), representing about 0.57 per cent of GDP.

659. Investment priorities are determined by the Government after a wide consultative process, involving both scientists and end-users. After the reforms, priorities were initially expressed by setting five-year funding targets for broad areas to which the research, scientific services and technology were expected to contribute.

660. Recognizing that the science system is highly interactive and ever-changing, Government's investment policy is now moving towards a more flexible and adaptive approach. This new approach will focus on four high-level science envelope goals (innovation, economic, environmental and social), 14 target outcomes which more fully describe the goals, and a performance measurement system. The last will monitor progress towards achievement of the target outcomes.

661. Target outcomes have been developed as a result of the 1997-1998 Foresight Project consultation process. Approximately 140 sectors submitted strategies to MoRST in 1998. The strategies identified the knowledge, skills and technologies that New Zealand will need in the future. MoRST published a draft set of target outcomes summarizing these ideas in late 1998. Approximately 130 comments on this draft set resulted in 11 target outcomes which will guide Government's R, S&T investment. The performance measurement system, which is being developed, will increase the information to guide public investment in R, S&T by providing a framework to report achievements from this investment.

662. A number of organizations purchase R, S&T on behalf of the Government. The main purchase agent is the Foundation for Research, Science and Technology, established in 1990. The Foundation is a statutory authority with an independent board, reporting to the Minister of Research, Science and Technology, and investing almost half of the public expenditure on research and development in New Zealand (approximately $325 million annually), in line with broad priorities set by the Government and more detailed sectoral research strategies.

663. The Foundation administers a range of R, S&T investments: the Public Good Science Fund, Technology New Zealand (the Graduate Research in Industry Fellowship, TechLink, and Technology for Business Growth schemes); and Fellowships (New Zealand Science and Technology Post-Doctoral Fellowships and the Tuapapa Putaiao Maori Fellowships). The Public Good Science Fund is the Government's major investment in strategic science and technology. The Fund had a value of $282 million in 1997-1998. Public good science and technology is defined as research that is likely to increase knowledge or understanding of the physical, biological or social environment: or to develop, maintain, or increase skills or scientific or technological expertise that is of particular importance to New Zealand; or which may be of benefit to New Zealand, but is unlikely to be funded, or adequately funded, from non-government sources. Public good science and technology funds are potentially available through a contestable bidding system to all organizations and individuals involved in research and development.

664. The Foundation for Research, Science and Technology receives applications from CRIs, research associations, government departments, incorporated societies, non-profit private trusts, private individuals, State-owned enterprises and universities, which compete to win contracts to undertake agreed research programmes that reflect national science priorities. In the 1998/99 financial year the Foundation allocated approximately $290.7 million

from the Public Good Science Fund ($282 million in 1997-1998). CRIs received $241.6 million ($236.2 million in 1997/98), research associations received $23.4 million ($21.9 million), universities received $20.1 million ($18.7 million) and private organizations received $5.6 million ($5.3 million).

665. As the Foundation was established to invest in research on behalf of the public it places a high priority on research being relevant and useful to the wider community, including those involved in business, the environment and social sector organizations. The Foundation for Research, Science and Technology Act 1990 was amended in 1993 to specify that its advice to the Government on matters relating to national priorities for research, science and technology "shall be formulated after consultation between the Foundation and representatives of industry, researchers, Maori, and the community". In addition, the same amendment further provided that in general "[i]n order to ensure that the views of industry, researchers, Maori, and the community are able to be considered in the formulation of the Foundation's advice on other matters, the Foundation shall institute a programme of regular consultation with representatives of industry, researchers, Maori, and the community."

666. The Health Research Council is the major public agency responsible for purchasing and coordinating health research and fostering the health research community in New Zealand. It was created from the former Medical Research Council under the Health Research Council Act 1990. The Council purchases a range of health research, including biomedical, clinical, public health, health services, Maori and Pacific Islands research (1999/2000 $40 million). It also funds a range of health research career development awards (1999/2000 $2.4 million). The Council's Ethics Committee is responsible for creating guidelines about health research ethics and accrediting other ethics committees which assess research. The Council organizes annual consultative conferences on topical health issues. The Maori Health Committee of the Council produces guidelines, reviewed annually, to assist researchers intending to undertake biomedical, public health or clinical research involving Maori participants or on issues relevant to Maori health.

667. The Royal Society of New Zealand is an independent, national academy of sciences, and a federation of scientific and technological societies. Its structure as a private body was confirmed in the Royal Society of New Zealand Act 1997 (Private Act). It is also an association for the advancement of science and technology which includes the promotion of science and technology within New Zealand and the fostering of international scientific cooperation. The Society, on behalf of the Government, administers a range of R,S&T investments: the Marsden Fund, the Science and Technology Promotion Contestable Fund, the International Science and Technology Linkages Fund, and the Captain James Cook Researcher Fellowships. The Marsden Fund, involving $23 million annually, is for the support of scientific and technological research which is characterized by excellence, irrespective of topic or science area.

3. Science promotion and technology transfer

668. MoRST supports a range of projects aimed at promoting values and attitudes supportive of science and technology as critical to future prosperity, and of science as having cultural value in its own right. Examples include fellowships awarded to researchers who are recognized leaders in their respective fields, programmes aimed at improving science and technology

education and careers advice, public lectures and debates on scientific and technological topics, public astronomy information services and maintenance and display of astronomical heritage material, establishment and maintenance of the "Wow it's science" interactive Web site, and development of a network of science communicators working in New Zealand public and private research institutions.

669. The CRIs have an active programme for the diffusion of research results. Under section 5 (1) (d) of the Crown Research Institutes Act 1992, they are charged with the promotion and facilitation of the results of research, and technological developments among industry, the wider scientific community, and interested members of the public. Increasingly, information is being made available to all sectors through the Internet.

670. Government and university scientists continue to be encouraged to publish scientific research. The universities and polytechnics also play a significant role in the diffusion of research results through the teaching of students, the publication of research results in papers and the dissemination of information through the media.

O. International science relations

1. General

671. Part of the role required of MoRST is to ensure that science and technology interests are well coordinated and linked, including internationally. The initial focus was on encouraging international scientific and technical cooperation, including the exchange of knowledge and expertise. The Government increasingly sees that it has a further important role in creating a rich variety of international partnerships and networks, and in promoting awareness within New Zealand and the region of the role of R, S&T in the global knowledge society.

672. The Government's involvement in maintaining and developing international science and technology links remains both direct and indirect. Indirect support is provided through the funding from government sources of research programmes, institutions and organizations involved in science and technology generally. Direct government involvement continues through forum mechanisms such as science and technology cooperation agreements and the membership of regional and international organizations. Funding for international science activities is available through a number of different agencies.

673. Between 1976 and 1991, New Zealand has concluded six bilateral treaties dealing with scientific and technological cooperation (with China, Germany, Mexico, Romania, Singapore and the United States of America) as well as others dealing with technical cooperation. Eight other bilateral treaties have been concluded between 1980 and 1992 regarding particular scientific research projects involving Australia, the United States of America and the International Atomic Energy Agency, respectively. One of them, for example, involves the long-term monitoring of sea levels. New Zealand's proximity to Antarctica has also led to the formation between 1988 and 1994 of five bilateral agreements on Antarctic cooperation, including facilities in New Zealand for scientific expeditions. These involve France, Germany, Italy, Sweden and the United States of America.

674. In addition, a wide range of relevant agreements, arrangements or understandings of a less-than-treaty status have been concluded, involving either the Government as such, or agencies like the MoRST or the Foundation for Research, Science and Technology, acting with foreign counterparts. The subjects range from science and technology in general, to Antarctic cooperation, forestry, geoscience and seismology. The country partners include Argentina, Chile, China, Malaysia, Italy, Japan, the Philippines, South Africa and Switzerland. In New Zealand's devolved science system research providers are encouraged to forge links with international collaborators, in line with their own priorities. Thus, bilateral arrangements are now concluded only when the absence of such an arrangement may create a barrier to scientific and technological cooperation.

675. So far as wider international association is concerned, New Zealand has been actively involved in the Asia-Pacific Economic Cooperation (APEC) Industrial Science and Technology Working Group and the APEC Agricultural Technical Cooperation Experts Group as well as the Organisation for Economic Cooperation and Development. New Zealand remains a member of UNESCO, and has been on the Executive Council of that organization for the term 1995-1999. Other multilateral forums with an R, S&T interest in which New Zealand is involved include the Valdivia Group and the Commonwealth Science Council.

2. Other international relations

676. New Zealand has during the review period maintained an interest in bilateral agreements on film/video relations (or film co-production) with other countries. After the first such bilateral treaty was concluded (with Canada) in 1987, an agreement with the United Kingdom was concluded in 1993. Another such agreement has been signed with Italy in 1997, but was not in force at the end of the reporting period.

TOKELAU

Introduction

677. As already stated in paragraph 1 above, New Zealand ratified the International Covenant on Economic, Social and Cultural Rights on 28 December 1978 and it entered into force for New Zealand on 28 March 1979. New Zealand's ratification also applied to Tokelau. The present information covers implementation of the Covenant with regard to Tokelau from 1990 to 1997. It should be read in conjunction with New Zealand's fourth periodic report under the International Covenant on Civil and Political Rights.

I. GENERAL

A. The socio-economic context

678. Tokelau consists of three small atolls - Atafu, Fakaofo and Nukunonu - which lie some 500 kilometres to Samoa's north. Fakaofo is the southernmost, Nukunonu is nearly 50 kilometres away, and Atafu nearly 100 kilometres from Nukunonu.

679. Each atoll consists of a number of reef-bound islets encircling a fully enclosed lagoon. These islets vary in length from 90 metres to 6 kilometres, and in width from a few metres to 200 metres. At no point do they rise higher than five metres above sea level. The total land area is 12.2 square kilometres.

680. The people are Polynesian and the 1996 census population was 1,507. Human settlement is believed to go back 1,000 years. Through this time, the village - one on each atoll - has been the foundation of Tokelau society. Tokelauan is spoken on the atolls and is the language of government. English is taught as a second language, but is not widely understood among older people.

681. Key factors have included: a heritage of subsistence living, in a remote and precarious environment where natural resources are fragile; small, scattered population, and a more recent history of out-migration; isolation from major trade routes; and dependence on sea transport for physical contact with the outside world.

682. The long-standing focus on survival promoted systems of mutual support, based on extended families. It produced in each village (one on each atoll) a consensual style of decision-making around a male hierarchical base. In Tokelauan the only word for law is tulafono, or custom of the elders.

683. Under the traditional system, younger men gained prestige and a sense of personal worth from their contributions to both village and household economies through subsistence fishing and small-scale copra production. That system accorded women relatively high status, derived from their right to occupy the houses owned by kin groups and to manage domestic economies: husbands move to the houses of their wives at marriage. The cultural order gives high priority to the welfare of the weaker members and the equitable distribution of economic resources.

684. Increased contact with the outside world in this century has changed life and material expectations in Tokelau. There is now a dual economy which sees considerable interplay between the subsistence and cash sectors. In the last quarter of a century there has been increased focus on the provision of modern services, particularly in such areas as education, health, housing and telecommunications.

685. Traditional activities today have decreased in importance, thanks to monetization and public sector employment. The economy has become a heavily aid-driven one, dominated by an annual allocation of financial support from New Zealand. That accounts for some four fifths of a national budget of around $NZ 6 million. Additional New Zealand support (of around $NZ 2 million), for projects, focuses on transport, communications and power supply.

B. The political context

686. Tokelau became a British protectorate in 1877, a status that was formalized in 1889. At the request of the people, the British Government annexed the group (then known as the Union Islands) in 1916, and included it within the boundaries of the Gilbert and Ellice Islands Colony (today's Kiribati and Tuvalu).

687. Administrative control of the Union Islands was transferred to New Zealand in 1926 at the initiative of the British Government. Formal sovereignty was transferred to New Zealand with the enactment of the Tokelau Act 1948. Although Tokelau was declared in consequence to be part of New Zealand, it has a distinctive culture and its own separate political, legal, social and economic system.

688. Other features of the relationship include: New Zealand citizenship for all born in Tokelau, availability of New Zealand courts for serious disputes, land governed by custom, no New Zealand voting rights, and New Zealand Official Development Assistance support.

689. For the purposes of the principle of self-determination of peoples enshrined in the Charter of the United Nations, Tokelau is classified as a Non-Self-Governing Territory. Thus, New Zealand is responsible, as a member of the United Nations, for assisting Tokelau towards self-government and meeting the needs of Tokelau at the national level.

690. Governance issues in this context are especially challenging. The challenge derives from the fact that national government is far from the everyday world of most Tokelauans. People relate to the village as the institution they know, and to the traditional ways and codes by which the village is governed.

691. Given that background, and the fact that village needs generally have been met by the administration of customary practices by elders, New Zealand has administered Tokelau with a light hand. There has never been a resident New Zealand administrative presence. The present Administrator, appointed under the Tokelau Act 1948, resides in Wellington but visits Tokelau regularly.[146]

C. Current constitutional programme

692. National governance issues, for Tokelauans themselves, have come to the fore in the 1990s. Tokelau recognizes that in today's world, it needs a national government capacity. This is in order to advance adequately those limited but important interests which the three villages share, and which can only be advanced through collective action. In the main this is a product of Tokelau's contemporary need to manage its response to external forces, given the extent to which the outside world has changed life and material expectations there. There is an instinctive wish to be self-reliant to the greatest extent possible, and equally a recognition that no longer is Tokelau able fully to sustain itself economically.

693. In 1992 Tokelau and New Zealand agreed to follow a constitutional programme which has the effect of providing Tokelau with formal powers to enable it to establish and operate its own national government.

694. In 1994 a United Nations visiting mission (the fourth since 1976) was informed that Tokelau had under active consideration both the Constitution of a self-governing Tokelau, and an act of self-determination. No set timetable was specified.

695. In evaluating the constitutional programme, the overriding consideration to be borne in mind is Tokelau's need to work from a local frame, devising for itself governance arrangements

that can fit a far from conventional decolonization context. Tokelau's ability to form a new nation depends heavily upon its ability to modernize its three village governance structures, and a home-grown solution obviously is called for.

696. One special feature has been the need to relocate to the atolls the Tokelau Public Service (TPS). The TPS developed in its present form from the 1970s, to provide Tokelau with modern services. It was organized under a New Zealand model and under New Zealand control from a base in Samoa (which had been selected taking account of the limited state of communications with and within Tokelau at that time).

697. The development of a home-grown national government capacity, where political control comes collectively from the villages, underlined the need to change that older framework. By 1994 the physical relocation of the TPS had largely been accomplished. The spotlight then turned to how best the service, now spread physically among the three villages, might adapt to a very different political and cultural environment.

698. Two relevant processes have been under way since 1994. At the formal national level, New Zealand has acted to devolve executive and legislative powers to Tokelau. On 27 January 1994, the Administrator's powers, which cover administration of the executive government of Tokelau, were delegated to the General Fono (the national representative body), and when the General Fono is not in session, to the Council of Faipule (a Cabinet-equivalent body established in 1993). The Tokelau Amendment Act passed by the New Zealand Parliament in 1996, and which entered into force on 1 October of that year, conferred on the General Fono a power to make rules for the peace, order and good government of Tokelau, including a power to impose taxes.

699. The second process has taken place in Tokelau, (a) operationally in the sense that the General Fono and the Council of Faipule have gained experience in the exercise of executive and legislative powers (in a cultural context in which the Western notion of separation of powers has never taken root), and (b) conceptually in terms of considering how governance arrangements for village and nation might best be structured. The route has been to arrange the foundation, i.e. the village, before arranging the nation.

700. Tokelau is following the approach, first, of devolving most public service functions to the village, and secondly, of making all authorities, including the TPS, directly accountable to Tokelau institutions. It is envisaged that national government should undertake only what the villages individually cannot do: broadly, that is, to manage business which relates to, or derives from, Tokelau's relations with the world outside.

701. The New Zealand State Services Commissioner has a statutory responsibility to administer the TPS. In order for Tokelau to assume responsibility for its public service (however that may be structured in future), a further formal step is needed by New Zealand: the repeal of the relevant legislation (the Tokelau Amendment Act 1967 Part I). New Zealand is committed to taking that step as soon as Tokelau is ready.

702. In 1994 the General Fono established a broadly based Special Constitution Committee. Over five weeks in 1995, constitution workshops were held on each atoll. The discussions were

broad ranging and widely attended. This process stimulated public interest in what a constitution was and what it meant, and led to a clearer identification of Tokelau needs and desires. Following further committee meetings, an initial report in Tokelauan was issued in late 1996.

703. Two publications appeared in October 1997 under the aegis of the Tokelau Law Project which is directed by Professor A.H. Angelo of the Law Faculty of Victoria University of Wellington.[147] The first was Tulafono a Tokelau (The Law of Tokelau). This is a one-volume working collection, designed to improve Tokelau's access to the existing law and facilitate the proper use of the legislative power granted in 1996. The second was Ko na Totoga o te Tulafono Fakavae (Elements of the Constitution), stemming from the ongoing work on a constitution.

704. The first publication included significant Tokelau language material. Introductory sections included an evaluation of the Tokelau Law Project and an overview of the Tokelau legal system.

705. The second publication incorporated the Special Constitution Committee's Initial Tokelau-Language Report, and provided the first English translation. The Committee had seen its first report as providing a "first glimpse" of a constitution. Supplementing these texts was a considerable commentary by Professor Angelo.

706. The report reflected the desire for greater self-reliance of government in Tokelau, for clear expression of the rules about the use of power in the community, and a strong sense of the nature and importance of the relationship with New Zealand. There was a consensus that the General Fono should consider possible implementation of aspects of the report in advance of a final decision on the future Constitution of Tokelau.

707. Tokelau's approach to constitution-making thus reflects its approach to governance: of shaping arrangements according to Tokelau needs and tradition, while also seeking to find a good balance between the traditional and the imported. Tokelau is not following the immediately easier example of other countries which have in their evolution used borrowed constitutional clothes.

D. Tokelau and the International Covenant on Economic, Social and Cultural Rights

708. The most significant developments relating to the implementation of the Covenant continue to concern the development of local institutions of government. In the present phase of its constitutional evolution, Tokelau's overriding focus is on the goal of nation-building.

709. Tokelau well understands that it is bound by a number of international human rights treaties, including the Covenant. A booklet produced in Tokelauan and English in 1990 included the main human rights documents of relevance to Tokelau.

710. In its early attention to a constitution, Tokelau has included the mode of reflecting therein its commitment to human rights. The initial report on a constitution includes these (draft) provisions:

(a) Individual human rights for all people in Tokelau are stated in the Universal Declaration of Human Rights and are implemented in the International Covenant on Civil and Political Rights;

(b) The rights of individuals in Tokelau shall be exercised having proper regard to the duties of other individuals, and to the community to which the individual belongs.

711. This early attention being given to a constitution, and to how Tokelau might reflect there its commitment to human rights, indicates that Tokelau should be well equipped to address how it would wish, in a post-self-determination situation, to give local effect to that commitment.

712. Tokelau nonetheless faces a core question of law and custom. Because, traditionally, government in Tokelau is on a village-by-village basis, there has been little in the Tokelau system that takes a formal shape recognizable externally. Custom[148] is at the heart of the system. Much of it is unwritten but hallowed by tradition and by regular reinforcement in practice.

713. At a time such as now, when custom and law interact to an increasing degree, Tokelau seeks understanding of its situation. For it faces a large challenge in moving from socially known rules in an oral tradition, to written law of the Western conception. As Tokelau considers what its commitment to basic human rights should be, Tokelau is mindful that human rights promote the imported notion of individuality, while the idea of community, with which Tokelauans are familiar, promotes a sense of unity and sharing.

714. So this is a considerable evolution away from tradition. For Tokelauans, this means a move away from following a particular set of rules and practices within their cultural setting, to following a set of rules and practices recognizable as consistent with life in the international community, and the rules and practices of other States.

715. At this stage of Tokelau's constitutional evolution, questions concerning the application of the International Covenant on Economic, Social and Cultural Rights remain formally the responsibility of the New Zealand Government. They are addressed in the context of New Zealand's relations with Tokelau. The Administrator has a close consultative relationship with the General Fono and the Council of Faipule.

II. INFORMATION RELATING TO SPECIFIC ARTICLES

716. Information on Tokelau relating to specific articles of the Covenant follows.

Article 1

717. New Zealand remains committed to assisting Tokelau towards the exercise of its right to self-determination.

718. As described in Part I above, Tokelau, in the present constitutional phase, is gaining experience of self-government, and establishing political structures which will make meaningful its choice of one of the political status options offered under relevant resolutions of the United Nations General Assembly. The distinctive local context, which makes the

decolonization context quite atypical, determines matters of timing and pace. The exercise is a sensitive one, in the first place because the Tokelau-wide structures upon which self-government necessarily is being built derive their formal powers from an external authority which has never had significant impingement on village life; and secondly because, as already mentioned, the only socially known rules in the village are customary ones within an oral tradition.

719. Questions involved in the preparation for self-determination have been identified broadly in the ongoing dialogue between New Zealand and Tokelau. An 11-page statement (the Voice of Tokelau) made by Tokelau to the United Nations visiting mission in 1994 contained Tokelau's "blueprint" for self-determination.

720. The following indication of New Zealand thinking was provided in a statement of May 1995 to the United Nations Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples:

> "What [Tokelau's statement to the 1994 visiting mission] reflects is the principle that a former administering power should make specific efforts to help a very small country facing constraints of Tokelau's type. Such assistance would be of an ongoing type. The central thought is that after self-determination, Tokelau would not be cut adrift and that New Zealand, besides other external partners in their appropriate ways, would see it as part of their function to help Tokelau succeed."

Article 2

721. New Zealand has taken consistent steps, through economic and technical assistance and cooperation, to ensure that the rights recognized in the Covenant are realized in Tokelau.

722. Tokelau has a notably cohesive social structure based on family and the principle of sharing. The cultural order gives high priority to the welfare of the weaker members and the equitable distribution of economic resources.

723. Tokelau recognizes that as its economy becomes more monetized, there is the potential for those who do not have paid employment of one kind or another to become relatively disadvantaged. The challenge that is inherent here is being addressed through a conscious linking of economic and social issues to the ongoing development of local insitutions of government. Concern that the spirit of self-help of earlier times has been disappearing has become a prominent feature in the various "whither Tokelau" discussions since 1994.

724. Non-nationals living in Tokelau, who are few in number, in the main are of Tuvaluan or Samoan origin, and are well integrated (commonly through marriage) into one or other of the three villages. The only long-standing resident of European origin is a Catholic priest.

Article 3

725. In Tokelau culture there has traditionally been a clear demarcation between male and female roles. The situation of women, however, is not static, and in employment a significant promotion of gender equity is under way. Many Tokelauans have lived abroad (some 5,000 live in New Zealand and retain strong cultural links with Tokelau) and have been exposed to new thinking.

726. Together, each of the three village women's organizations (Fatupaepae) form a national Council of Women. A 1996 report published with the assistance of UNICEF - A Situation Analysis of Children and Women in Tokelau - noted that the Council was seeking to foster and develop the role of women in the social, cultural and economic development of their country.

727. Women have always been responsible for the upkeep of homes, food preparation and weaving handicrafts. They provide nurses and most teachers. Today the traditional demarcation between male and female roles is less marked. Each village, for example, now sends a woman delegate to the General Fono.

728. There is nothing in the laws of Tokelau sanctioning any kind of discrimination against women.

Article 4

729. Neither the New Zealand Government nor Tokelau have taken any measures to limit the enjoyment of the rights recognized by the Covenant.

Article 5

730. The obligations contained in the Covenant have been accepted on behalf of Tokelau and there is no intention of deviating from those obligations; nor has Tokelau restricted or derogated from any of the rights and freedoms recognized in the Covenant.

Article 6 (and Article 13)

731. Questions concerning the right to work must be seen against the physical and cultural contexts and, further, they must take into account the virtual absence of employment opportunity outside of that which is publicly or community-funded. To survive, a community of this nature has placed more emphasis on the obligations of its members to provide and share, than on individual effort. Over the past 25 years, the Tokelau Public Service has become the major employer.

732. Literacy levels are high, there is 100 per cent access to primary through to form 5 education, and there is heavy expenditure on education outside Tokelau. The trend is to widen the curriculum to include vocational and business skills. Tokelau has an effective primary health system.

Article 7

733. Tokelau is working towards establishing the necessary village and national systems to take over from the present public service (TPS) functions. It is working towards the adoption of a body of rules for employment at both village and national level, whether within or beyond the public service. This employment regime would replace the Tokelau Public Service Manual, issued by the New Zealand State Services Commissioner in terms of his statutory responsibility for the TPS.

734. A body of drafting work has already been undertaken in this area. In that connection, the application of International Labour Organization conventions to Tokelau is well understood. For example, a draft of the prospective Tokelau Employment Rules contains provisions on equal employment and equal remuneration.

Article 8

735. The initial comments under article 6 apply here. While there are no trade unions in the outside world's sense, there is an informal association of public service employees.

Article 9

736. A sharing and caring ethos is fundamental to Tokelau society. Persons older than 60 receive a pension of $NZ 27.50 a month. Patients requiring medical treatment that is unavailable in Tokelau are officially sponsored to travel to Samoa or New Zealand, as required.

Article 10

737. Both law and practice recognize the family as the natural and fundamental group unit of Tokelau society.

Articles 11 to 15 and generally

738. A final overview comment may be made.

739. This report on Tokelau serves to underline a decolonization context which is markedly distinctive and notably challenging. Tokelau in the later 1990s is seeking, with more success than might have been anticipated earlier, to find the local solutions in areas of economic direction and governance that are the only ones that could work in this context. In this decade Tokelau has thought more deeply than before about what it needs to do for its own sake, and particularly about how to accommodate traditional imperatives and modern needs. The establishment of national Government has helped this process.

740. The underlying issue, against a background of increasing aid dependency over a quarter of a century, is how Tokelau can best establish the capacity for economic survival in a sustainable way. There are signs of attitudinal change. Small businesses, often run by women, now compete with the cooperative stores, often selling clothing, footwear or bread. Five years ago, such competition was not allowed, and bread was given away.

741. In the background, New Zealand is working with Tokelau to reach agreement on a framework for economic development, looking out 10 years, which promotes greater self-reliance.

742. This is why, as already indicated, questions about the application of each of the Covenant's provisions must be dealt with within the Tokelau framework. Two points, however, should again be emphasized:

(a) The rights and provisions established under the present Covenant are upheld broadly in Tokelau practice;

(b) A self-governing Tokelau will be well placed to consider how to reflect, within a still developing legal system, the fact that it has become a member of the global village, and thus that it is bound by a number of international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights.

Notes

[1] Copy of Ministry of Justice, Same-Sex Couples and the Law and the companion paper, Same-Sex Couples and the Law: Backgrounding the Issues (Wellington: 1999) are attached among the supplementary materials.

[2] See also paragraph 50 and paragraphs 57 ff below.

[3] New Zealand's initial report under the Covenant (para. 37).

[4] Refer also to the information provided under article 13 below.

[5] Statistics New Zealand, Disability Counts (Wellington: 1998) (extracts attached among the supplementary materials), Health Funding Authority and the Ministry of Health, Disability in New Zealand - an Overview of the 1996-97 Surveys (Wellington: 1998) (extracts attached among the supplementary materials) (see especially pages 16 and 37 of the first document and pages 47-48 and 169 of the second document).

[6] This Act was not covered in New Zealand's initial report under the Covenant (which related to the period from 1979 to mid-1990) but its genesis and effect were briefly described in New Zealand's introductory statement delivered at the time of presentation of that report to the Committee (Ministry of Foreign Affairs and Trade, Information Bulletin No. 49 (Wellington: June 1994), p. 5), and in New Zealand's third periodic report under the International Covenant on Civil and Political Rights (which related to the period from April 1988 to December 1993) (paras. 112 ff). Reference also should be made to the answers to the issues raised by the Committee in regard to the initial report (Ministry of Foreign Affairs and Trade, Information Bulletin No. 49 (Wellington: June 1994) pp. 17-19 (para. 26)).

[7] See further under article 7 below.

[8] See also New Zealand's report on the same ILO Convention for the preceding period, 1994-1995.

[9] This is not a blanket prohibition. The situation is that any party to negotiations can object to a person with such a conviction acting as a representative.

[10] Outlined in Statistics New Zealand, New Zealand Official Yearbook 1992 (Wellington: 1992) (attached among supplementary material).

[11] The report should also be consulted for further information on the enforcement of the minimum wage system in New Zealand (see pp. 5 ff of the report).

[12] Sexual harassment in employment was the most frequent source of complaints lodged at the Human Rights Commission in the year from 1 July 1996 to 30 June 1997 (see Human Rights Commission, Annual Report 1997 (Wellington: 1997, p. 23)).

[13] For the position previously, see New Zealand's initial report on the Covenant (paras. 153 ff).

[14] The decisions are attached among the supplementary materials.

[15] For more information, reference may be made to New Zealand's reports on the Equal Remuneration Convention, 1951 (No. 100) for 1 July 1993-30 June 1996 and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) for 1 July 1994-30 June 1995.

[16] See Department of Labour, Labour Market Statistics 1998, "Characteristics of the employed" (attached as annex 6).

[17] See Statistics New Zealand, Census 96 - Incomes (Wellington: 1996) pp. 29-38 (supplementary materials).

[18] This information has been requested by the Committee in its concluding observations to New Zealand's initial report under the Covenant (para. 21).

[19] See, for example, the New Zealand reports for the period 1 July 1993-30 June 1995 and for the period to 31 May 1997.

[20] See annex 7 for data from 1992-1999.

[21] See the paragraph on minimum entitlements in the extract from Statistics New Zealand, New Zealand Official Yearbook 1992 (Wellington: 1992) (attached among the supplementary materials).

[22] A difference of coverage is, however, that while section 172 of the Labour Relations Act applied to all employees in the private sector, and in essence to employees in the State sector, who were covered by collective bargaining, section 10 of the Minimum Wage Amendment

Act 1991 applies to all employees, whether they are covered by collective or individual employment contracts. Section 10 of the 1991 Amendment Act now appears as section 11B of the reprinted Minimum Wage Act 1983.

[23] See section 3 of the Shop Trading Hours Repeal Act 1990.

[24] Section 17 states: "Everyone has the right to freedom of association."

[25] Official figures on the numbers of registered unions and their membership were collected until May 1991. The Victoria University of Wellington has collected data on the numbers of registered unions and their membership since 1991. Other than the May 1991 figure, the data provided in the table are taken from work by Victoria University. The table is reproduced from the New Zealand Official Yearbook 1998. More recent figures (December 1997) from Aaron Crawford, Raymond Harbridge, and Kevin Hince, "Research Note: Unions and Union Membership in New Zealand: Annual Review for 1997", New Zealand Journal of Industrial Relations, volume 23 (3), 1998, pp. 191-198 - are as follows: 80 unions with 327,800 members, a density of 19.2 per cent.

[26] Including those in the public sector: see paragraph 77 above.

[27] Pursuant to section 45 (5) of the Defence Act 1990 as substituted by section 152 of the Employment Contracts Act 1991.

[28] Pursuant to section 96 of the Police Act 1958 as substituted by section 15 of the Police Amendment Act 1991.

[29] Section 63 (e) reads: "Subject to section 71 of this Act, participation in a strike or lockout shall be unlawful if ... (e) It is concerned with the issue of whether a collective employment contract will bind more than one employer;". Section 71 of the Act enables strikes/lockouts on grounds of safety or health.

[30] See the more detailed information in New Zealand's report under the ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98) pp. 5-7.

[31] A copy of the media release is attached among the supplementary materials.

[32] Under the Citizens-Initiated Referenda Act 1993, referred to in paragraph 12 above.

[33] Note also that a previous discretionary stand-down period on the ground of high income was made compulsory in 1991. A revised stand-down formula was introduced in April 1997. The length of the stand-down period is based on an applicant's income and family circumstances. This reflects the expectation that applicants will be able to support themselves for an initial period before relying on State support.

[34] Annual entitlement in 1999.

[35] See, in regard to Special Needs Grants for food, for example, paragraph 328 below.

[36] The range of Special Needs Grants is set out in a table (indicating reason for grants, their number and their total costs, for the year ended 30 June 1996) published in Statistics New Zealand, New Zealand Official Yearbook 1997 (Wellington: 1997). The table is attached as annex 10.

[37] See New Zealand's third and fourth combined reports under the Convention on the Elimination of All Forms of Discrimination against Women (comments under article 16).

[38] See Commissioner for Children, Annual Report 1997 (Wellington: 1997) p. 13 (attached among supplementary materials).

[39] See initial report under the Convention on the Rights of the Child (para. 9).

[40] New Zealand Law Commission, Succession Law: a Succession (Adjustment) Act (NZLC R39), (Wellington: 1997).

[41] Human Rights Commission, Annual Report 1997 (Wellington: 1997) p. 23.

[42] See initial report under the Covenant (paras. 30-32).

[43] Department of Social Welfare, Social Assistance - Welfare That Works (Wellington: 1991), a 91-page statement of government policy on social assistance.

[44] The Maori language terms for family group, subtribal unit and tribe, respectively.

[45] Commissioner for Children Annual Report 1997 (Wellington: 1997) p. 3 (attached among the supplementary material).

[46] The services are currently described in: Health Funding Authority, What Can I Expect? Health and Disability Services in New Zealand 1998/1999 (Wellington: 1998) pp. 8, 9 (attached among the supplementary materials).

[47] In regard to education, see under article 13 (paras. 579-581).

[48] To these may be added the Crimes Amendment Act 1995, which makes female genital mutilation (of women and children) an offence. In practice, this would affect any migrants from other countries living in New Zealand who have been subjected to this practice or may be at risk of being so: see New Zealand's fourth periodic report under the International Covenant on Civil and Political Rights (paras. 82, 83).

[49] Reference should also be made to New Zealand's fourth periodic report under the International Covenant on Civil and Political Rights under article 23 (paras. 169-172) and article 24 (para. 179).

[50] Reference should also be made to New Zealand's fourth periodic report under the International Covenant on Civil and Political Rights under article 24 (paras. 180, 181).

[51] See also the primary duties imposed on employers, under the same Act, described in New Zealand's initial report under the Convention on the Rights of the Child (para. 372).

[52] Statistics New Zealand, February 1999, chapter 6. See annex 14 for the indicators of the standard of living in 1990-1996 in New Zealand in comparison with other countries of the Organization for Economic Cooperation and Development (OECD).

[53] Statistics New Zealand, Demographic Trends 1998 (Wellington: 1998).

[54] Figures are extracted from Statistics New Zealand, New Zealand Official Yearbooks 1996 (Wellington: 1996) p. 149; 1997 (Wellington: 1997) p. 168; and 1998 (Wellington: 1998) p. 143. It should be taken into account that the number of grants does not correspond to the number of people receiving grants; one person may receive several grants within the one year.

[55] Statistics New Zealand, New Zealand Official Yearbooks 1992 (Wellington: 1992) and 1998 (Wellington: 1998).

[56] Ministry of Health, National Plan of Action for Nutrition (Wellington: 1996) p. 13.

[57] Ministry of Health, National Plan of Action for Nutrition (Wellington: 1996) p. 13.

[58] The results of the Survey were published in August 1999 in a 268-page document: Ministry of Health, NZ Food: NZ People - Key Results of the 1997 National Nutrition Survey (Wellington: 1999). The results will be discussed in New Zealand's next periodic report under the Covenant.

[59] It has to be noted, though, that the New Zealand Council of Christian Social Services stated that: "In a survey of Salvation Army foodbank clients, 57.6 per cent of those surveyed were paying 50 per cent or more of their income on rent."

[60] The first table is extracted from Statistics New Zealand, Household Economic Survey, the second from Statistics New Zealand, Census of Population and Dwellings 1996 - National Summary, table 30. Occupancy of dwellings.

[61] Statistics New Zealand, New Zealand Now: Housing (Wellington: 1998) pp. 38, 39.

[62] Statistics New Zealand, New Zealand Official Yearbook 1997 (Wellington: 1997) and Statistics New Zealand, New Zealand Now: Housing (Wellington: 1998).

[63] See Ministry of Foreign Affairs and Trade, Information Bulletin No. 49 (Wellington: June 1994) p. 5.

[64] Ministry of Health (Wellington: 1997).

[65] These requirements are set out in the Crown Statement of Objectives in the Funding Agreement between the Ministry and the HFA, and in the Medium-Term Strategy referred to above, paragraph 386.

[66] For commentary on the private and voluntary sectors, see Ministry of Health, Medium-Term Strategy for Health and Disability Support Services (Wellington: 1999) pp. 2, 5, 6 (attached among the supplementary materials).

[67] See pages 2, 3 and 23-25 which indicate briefly the general funding and other structural issues; the remainder of the booklet sets out the specific services available and other relevant matters.

[68] See Statistics New Zealand, New Zealand Official Yearbook 1998 (Wellington: 1998) pp. 184-186: extract regarding the ACC (enclosed among the supplementary materials).

[69] Social rehabilitation also includes, without limitation, attendant care, childcare, modifications to houses and motor vehicles, and payment of teacher aides.

[70] Accident Rehabilitation and Compensation Insurance Corporation, Annual Report 1998 (Wellington: 1998) pp. 16 ff; see also outline of the particular actions being undertaken by the Corporation towards providing appropriately effective services for Maori and Pacific Island people (pp. 20, 21).

[71] Comparative figures for previous years are shown in a table extracted from Ministry of Health, Expenditure Trends in New Zealand 1980-1998 (Wellington: 1999) (attached as annex 18 to the present report).

[72] See for more detailed information on measures and trends during the reporting period: Ministry of Health, Progress on Health Outcome Targets 1998, pp. 81-88 (attached among the supplementary materials).

[73] The information in paragraphs 409 and 410 is based on Ministry for the Environment, The State of New Zealand's Environment (Wellington: 1997).

[74] For information on immunization programmes, including coverage rates for the period 1994-1997, see Ministry of Health, Progress on Health Outcome Targets 1998 (Wellington: 1998) pp. 74-81.

[75] In regard to the life expectancy of Maori see also paragraph 326 above.

[76] Ministry of Health, Background Paper to Ministry of Health, Strengthening Public Health in Action: the Strategic Direction to Improve, Promote and Protect Public Health (Wellington: 1997) p. 20.

[77] In this respect, see particularly the terms of the Values to Guide Public Health Action, Ministry of Health, Strengthening Public Health in Action: the Strategic Direction to Improve, Promote and Protect Public Health (Wellington: 1997) pp. 9, 10.

[78] See for more detailed discussion: Ministry of Health, Strengthening Public Health in Action: the Strategic Direction to Improve, Promote and Protect Public Health (Wellington: 1997); see also Ministry of Health, Making a Pacific Difference in Health Policy (Wellington: 1998).

[79] Ministry of Health, Background Paper (Wellington: 1997) p. 19 and Ministry of Health, Strengthening Public Health in Action: the Strategic Direction to Improve, Promote and Protect Public Health (Wellington: 1997).

[80] Ministry of Health, Making a Pacific Difference: Strategic Initiatives for the Health of Pacific People in New Zealand (Wellington: 1997).

[81] Ministry of Health, Making a Pacific Difference in Health Policy (Wellington: 1998) p. 4.

[82] Ministry of Health, Progress on Health Outcome Targets 1998 (Wellington: 1998) p. 264 (Index "Pacific peoples").

[83] Ibid., p. 80.

[84] Ibid., pp. 104, 105.

[85] Relevant data covering the reporting period 1990-1997 and information on measures adopted are provided in ibid., pp. 104 ff.

[86] For further information, see ibid., pp. 175 ff.

[87] Information on the Domestic Violence Act 1995 passed during the reporting period to provide greater protection for children and other victims of domestic violence has been given in paragraphs 230 ff above.

[88] For ongoing data and measures see Ministry of Health, Progress on Health Outcome Targets 1998 (Wellington: 1998) p. 99.

[89] Ibid., pp. XI ff.

[90] Ibid., pp. 158 ff; see also the relevant information in the Executive Summary of Targets, pp. XI ff.

[91] Ministry of Health, In Our Hands - New Zealand Youth Suicide Prevention Strategy, and Youth Suicide Facts (Wellington: 1999) (attached among the supplementary materials); see also New Zealand Health Information Service, Youth Suicide Facts (Wellington: 1999) (attached among the supplementary materials). Both documents set out the government initiatives towards youth suicide prevention (see especially pages 6, 7 of the last document).

[92] Ministry of Health, Progress on Health Outcome Targets 1998 (Wellington: 1998) pp. 187 ff.

[93] Ibid., pp. 204 ff.

[94] Ibid., pp. XXX, 13 ff, and 218-232.

[95] The Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (addressing some technical and practical issues that have arisen subsequently) is attached among the supplementary materials.

[96] The National Mental Health Strategy is defined in the Mental Health Commission Act 1998 (which remains in force until 30 August 2001) as meaning "the strategic direction for the mental health services of New Zealand described in

(i) the document entitled 'Looking Forward - Strategic Directions for the Mental Health Services' published by the Ministry in June 1994; and

(ii) the document entitled 'Moving Forward - The National Mental Health Plan for More and Better Services' published by the Ministry in July 1997; and

includes every variation of, or addition to, those strategic directions approved by the Minister and published".

[97] For further information see Ministry of Health, Progress on Health Outcome Targets 1998 (Wellington: 1998) pp. XI ff, 13-16, and 63-74.

[98] For further information on health issues and objectives in relation to alcohol, see ibid., pp. XI ff, 13-16, and 145-153.

[99] For further information on trends and objectives in these respects, see ibid., pp. XI ff, 13 ff, and 93-99 (drownings), 109-127 (traffic accidents) and 218-226 (falls - falls among older people are noted as a major health problem).

[100] This Act has been dealt with elsewhere, particularly in New Zealand's third periodic report under the International Covenant on Civil and Political Rights.

[101] This Act has been dealt with elsewhere, particularly in New Zealand's third periodic report under the International Covenant on Civil and Political Rights, but see also this report (paras. 26 ff).

[102] A resumé of the main effects of the Acts in the health context is given in a paper (attached among the supplementary materials).

[103] Ministry of Health, Strengthening Public Health in Action - The Strategic Direction to Improve, Promote, and Protect Public Health (Wellington: 1997), pp. 9, 10.

[104] For example, as to youth suicide, see pp. 163, 164, concerning school-based education programmes to promote youth mental health.

[105] Wananga provide polytechnic and university-type programmes specifically for Maori, with an emphasis on Maori language and Maori custom.

[106] See introductory statement to the initial report under the Covenant in Ministry of Foreign Affairs and Trade, Information Bulletin No. 49 (Wellington: June 1994) pp. 3 ff.

[107] The information was supplied by the usually resident population in 1996, aged 15 years and above. In regard to the last table, the information was supplied by the usually resident population in 1991 and 1996, aged 15 years and above.

[108] Statistics New Zealand, 1996 Census (Wellington: 1996) p. 17-Maori.

[109] Ministry of Education Annual Report on Maori Education 1996/1997 (Wellington: 1997), p. 72.

[110] See, for example, the tables on Proportion of School Leavers by Highest Qualification and Ethnicity, 1992-1996, and Growth in Tertiary Students by Ethnicity, Gender and Sector, 1991-1996, shown at pages 57 and 60.

[111] Ministry of Education Annual Report on Maori Education 1997/1998 (Wellington: 1998), p. 81 ff. See also the statements by the Minister of Education and Secretary for Education (pp. 5-8).

[112] Part of this is outlined in Ministry of Education Making Education Work for Maori - Report on Consultation (Wellington: 1998) (attached among the supplementary materials).

[113] In 1995, 38 per cent had gone on to further education, compared to 51 per cent of non-Pacific Island students.

[114] Ministry of Education, New Zealand Schools 98 (Wellington: 1998), pp. 23, 24.

[115] The tables, covering the years 1981-1997, have been extracted from Statistics New Zealand, New Zealand Official Yearbook 1992, 1994 and 1998.

[116] Ministry of Education, New Zealand Schools 98 (Wellington: 1998) pp. 10 ff (attached among the supplementary materials).

[117] Ibid., pp. 11 ff, 18, 23, 94 ff.

[118] Ibid., p. 11.

[119] Ibid., pp. 21, 22, covering actual enrolments 1991-1998 and projected enrolments 1999-2016.

[120] Ibid., p. 5.

[121] Ibid., pp. 11, 12.

[122] Ibid., p. 13.

[123] The Government levy on fee-paying students is currently $600 per year for each primary school student and $900 (GST inclusive) for each secondary school student. The levy is rebated for students who do not attend a full year.

[124] This means a permit for permanent residence.

[125] This refers to the temporary exemption given to e.g. diplomatic and consular representatives, foreign military personnel in certain circumstances, seafarers, fishers, aircrew, and persons visiting Antarctica.

[126] In 1998 the Education Review Office and the Education and Science Select Committee completed separate reports on the Correspondence School. Both reports highlighted areas of significant concern relating to the performance of the school and the wider policy environment in which it operated. The August 1999 Education Review Office report noted progress in addressing some of the issues outlined in the reports. Since work has been undertaken by the Ministry of Education on these issues, they will be discussed in more detail in the next periodic report under the Covenant.

[127] See above, para. 495, note 105.

[128] There are two exceptions to this. The first is where assisted students are enrolled by agreement between the council and the chief executive of the Ministry of Foreign Affairs and Trade. The second is where the enrolment is in a vacant place established for foreign students and dependent on foreign student fees.

[129] In 1997-98 government expenditure amounted to $277 million, and in 1996-97 to $250 million.

[130] It is likely that a number of children are enrolled concurrently in more than one service, so rates of participation can only be considered "apparent" and may be inflated.

[131] These initiatives are discussed in Ministry of Education, New Zealand Schools 98 (Wellington: 1998) pp. 37-41.

[132] It has to be noted that between 1990 and 1998 the number of reported suspensions rose significantly, from 4,297 in 1990 to 11,929 in 1998.

[133] This is discussed in Ministry of Education, New Zealand Schools 98 (Wellington: 1998) pp. 23, 24.

[134] More information on these and on Special Education 2000 is provided in: Ministry of Education, Paper regarding Special Education 2000 (attached among the supplementary materials).

[135] Education at a Glance: OECD Indicators (1998), pp. 204 ff.

[136] Extracted from Statistics New Zealand, New Zealand Official Yearbook 1998 (Wellington: 1998).

[137] Extracted from Statistics New Zealand, New Zealand Official Yearbook 1994 (Wellington: 1994).

[138] Ministry for Culture and Heritage, Cultural Policies Database: New Zealand.

[139] Marae: the meeting area of a whanau (extended family), hapu (subtribe), iwi (tribe), or other social unit, that is the focus of that group's formal and informal activities.

[140] A copy of Te Puni Kokiri, National Maori Language Survey, Te Mahi Rangahau Reo Maori (Wellington: 1999) is attached among the supplementary materials.

[141] See in regard to a summary of the litigation: Te Puni Kokiri, National Maori Language Survey, Te Mahi Rangahau Reo Maori (Wellington: 1999) p. 18, appendix 7.

[142] See paragraph 602 above.

[143] Taonga: property, treasure, artefact, relic.

[144] Lange v. Atkinson [1998] 3 NZLR 424, 428 (25-30) Blanchard J. The decision of the Court of Appeal was overturned by the Privy Council and sent back to the Court of Appeal for further consideration. These judgements are outside the reporting period and will be dealt with in the next periodic report under the Covenant.

[145] The Scientific and Industrial Research Act 1974 establishing the Department was repealed by section 48 of the Crown Research Institutes Act 1992 (see also para. 655).

[146] As to devolution of his powers, see para. 698.

[147] Professor Angelo is also Tokelau's legal adviser.

[148] Custom is defined as a body of rules in principle known to and understood by all members of the community.

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List of supplementary materials

1. Ministry of Foreign Affairs and Trade, *Information Bulletin No 49: Human Rights in New Zealand: Report to United Nations Committee on Economic, Social and Cultural Rights* (Wellington: June 1994).

2. Statistics New Zealand, *Disability Counts* (Wellington: 1998); Ministry of Health/Health Funding Authority, *Disability in New Zealand - An Overview of the 1996/1997 Surveys* (Wellington: 1998).

3. Statistics New Zealand, *New Zealand Official Yearbook 1992* (Wellington: 1992), extract on the Employment Contracts Act 1992.

4. Statistics New Zealand, *1996 Census of Population and Dwellings* (Wellington: 1996) pp. 39-58 - Incomes.

5. Statistics New Zealand, *New Zealand Official Yearbook 1998* (Wellington: 1998), extract on the Occupational Safety and Health Service.

6. *Trilford v. Car Haulaways Ltd*

7. Minister for Social Welfare, *Media Release of 22 April 1998 on the Community Wage Scheme* (http://www.executive.govt.nz/minister/mccardle/cwage/indexhtm, last accessed on 6 May 1999).

8. Commissioner for Children, *Annual Report 1997* (Wellington: 1997).

9. Ministry of Justice, *Discussion Paper: Same Sex Couples and the Law* (Wellington: 1999); Ministry of Justice, *Backgrounding the Issues* (Wellington: 1999).

10. Statistics New Zealand, *New Zealand Official Yearbook 1997* and *1998* (Wellington: 1997 and 1998 respectively), extract on the New Zealand Community Funding Agency.

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